रजिस्ट्री सं॰ डी॰ एल॰—(एन)04/0007/2003—05 REGISTERED NO. DL—(N)04/0007/2003—05

सत्यमेव जयते

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं॰ 15] नई दिल्ली, अप्रैल 7—अप्रैल 13, 2013 शनिवार/चैत्र 17—चैत्र 23, 1935 (शक)
No. 15] NEW DELHI, APRIL 7—APRIL 13, 2013, Saturday/CHAITRA 17—CHAITRA 23, 1935 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

भाग II — खण्ड 3—उप-खण्ड (ii)
PART II — Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 4 अप्रैल, 2013

का॰ आ॰ 845 —केंद्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं (2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिल्ली विशेष पुलिस स्थापना (के.अ. ब्यूरो) द्वारा संस्थापित नई दिल्ली स्थित दिल्ली उच्च न्यायालय और भारत के सर्वोच्च न्यायालय में आरसी-03(ए)/2004/एसीयू.-IX/नई दिल्ली (हरियाणा का जेबीटी भर्ती घोटाला) मामले से उत्पन्न अपीलों, पुनरीक्षणों तथा इससे संबद्ध अन्य मामलों एवं इसके अनुषांगिक मामलों का संचालन करने के लिए श्री सिद्धार्थ लूथरा, भारत के अपर महान्यायधिवक्ता को विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा॰ सं॰ 225/22/2013-एवी॰डी॰-II]

राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Personnel and Training)

New Delhi, the 4th April, 2013

S.O. 845.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Sidharth Luthra, Additional Solicitor General of India as Special Prosecutor for appearing in appeals, revisions arising out of the case RC 03(A)/2004/ACU-IX/New Delhi (JBT Recruitment Scam of Haryana) instituted by the Delhi Special Police Establishment (C.B.I.) in the Delhi High Court and Supreme Court of India at New Delhi and other matters connected therewith and incidental thereto.

[F.No. 225/22/2013-AVD-II]
RAJIV JAIN, Under Secy.

नई दिल्ली, 4 अप्रैल, 2013

का॰ आ॰ 846 —केंद्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं॰ 12) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए परीक्षण न्यायालयों/पुनरीक्षण या विधि द्वारा स्थापित पुनरीक्षण या अपीलीय न्यायालयों में इन मामलों से उत्पन्न अन्य मामले जो कि दिल्ली विशेष पुलिस स्थापना (सीबीआई) द्वारा संस्थापित किए गए हैं जिन्हें केंद्रीय अन्वेषण ब्यूरो द्वारा उन्हें सौंपा गया है, भुवनेश्वर, उड़ीसा राज्य में अभियोजन

मामलों का संचालन करने के लिए निम्नोक्त वकीलों को लोक अभियोजक के रूप में नियुक्त करती है:–

सर्वश्री

1. श्री राजेश्वर होता
2. श्री बिगयान कुमार शर्मा
3. कमल लोचन कार
4. मोहम्मद जियाउल हक

[फा॰ सं॰ 225/07/2012–ए॰वी॰डी॰–II]
राजीव जैन, अवर सचिव

New Delhi, the 4th April, 2013

S.O. 846.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints following advocates as Special Public Prosecutor for conducting prosecution of cases instituted by Delhi Special Establishement (CBI) in the State of Orissa at Bhubaneswar as entrusted to them by the Central Bureau of Investigation in the tribal courts and appeals/revisions or other matters arising out of these cases in revisional or appellate courts established by law.

S/Shri

1. Rajeshwar Hota
2. Bigyan Kumar Sharma
3. Kamal Lochan Kar
4. Md. Ziaul Haque

[F.No. 225/07/2012-AVD-II]
RAJIV JAIN, Under Secy.

नई दिल्ली, 5 अप्रैल, 2013

का॰ आ॰ 847 —केंद्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं॰ 25) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निम्नोक्त अपराध जो कि दिल्ली विशेष पुलिस स्थापना द्वारा अन्वेषित किए जाने हैं उन्हें विर्निदिष्ट करती है, नामत्:–

(क) भारतीय दंड संहिता 1860 (1860 का अधिनियम सं॰ 45) की धारा 203 के अंतर्गत दंडनीय अपराध तथा

(ख) उपर्युक्त उल्लिखित अपराध के संबंध में या उससे सम्बद्ध प्रयास, दुष्प्रेरणा तथा षडयंत्र तथा उसी संव्यवहार में किया गया या उन्हीं तथ्यों से उद्भूत कोई अपराध या अपराधों।

[फा॰ सं॰ 228/8/2013–ए॰वी॰डी॰–II]
राजीव जैन, अवर सचिव

New Delhi, the 5th April, 2013

S.O. 847.—In exercise of the powers conferred by section 3 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government hereby specify the following offence which is to be investigated by the Delhi Special Police Establishment namely:—

(a) Offence punishable under section 203 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and

(b) Attempt, abetment and conspiracy in relation to or in connection with the offence mentioned above and any other offence or offences committed in the course of the same transaction or arising out of the same facts.

[F.No. 228/8/2013-AVD-II]
RAJIV JAIN, Under Secy.

नई दिल्ली, 5 अप्रैल, 2013

का॰ आ॰ 848 —केंद्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं॰ 25) की धारा 6 सपठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए अरूणाचल प्रदेश सरकार, गृह विभाग, ईटानगर की दिनांक 8 जनवरी, 2013 की अधिसूचना संख्या एचएमबी(ए)-42/08 द्वारा प्राप्त सहमति से पुलिस थाना भालुकपोंग अरूणाचल प्रदेश में पंजीकृत मामला संख्या 17/2012 में भारतीय दंड संहिता 1860 (1860 का अधिनियम संख्या 45) के अधीन धारा 365, 109, 182, 193, 203, 120 बी तथा 34 के तहत तथा उपर्युक्त उल्लिखित अपराध के सम्बंध में या उनके सम्बद्ध में प्रयासों, दुष्प्रेरणाओं तथा षडयंत्रों तथा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध या अपराधों का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार सम्पूर्ण अरूणाचल प्रदेश राज्य के सम्बंध में करती है।

[फा॰ सं॰ 228/8/2013–ए॰वी॰डी॰–II]
राजीव जैन, अवर सचिव

New Delhi, the 5th April, 2013

S.O. 848.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Arunachal Pradesh, Home Department, Itanagar *vide* Notification No. HMB(A)-42/08 dated 8th January, 2013 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Arunachal Pradesh for investigation of case No. 17/2012 under sections 365, 109, 182, 193, 203, 120-B and 34 of the Indian Penal Code 1860 (Act No. 45 of 1860) registered at Police Station Bhalukpong Arunachal Pradesh and attempts, abetments and conspiracy in relation to or in connection with the above mentioned offences and any other offence or offences committed in the course of the same transaction or arising out of the same facts.

[F.No. 228/8/2013-AVD-II]
RAJIV JAIN, Under Secy.

वित्त मंत्रालय

वित्तीय सेवाएं विभाग

नई दिल्ली, 5 अप्रैल, 2013

का.आ. 849 —बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्द्वारा घोषणा करती है कि उक्त अधिनियम की धारा 10 की उपधारा (1) के खण्ड (ग) के उप-खण्ड (i) के उपबंध बैंक आफ बड़ौदा पर लागू नहीं होंगे, जहां तक उनका संबंध बैंक के अध्यक्ष एवं प्रबंध निदेशक श्री एस.एस. मुन्द्रा का इंडिया इंटरनेशनल बैंक मलेशिया बीएचडी, (आईआईबीएमबी), मैसर्स बड़ौदा पायनियर असेट मैनेजमेंट कंपनी लि, और मैसर्स इंडियाफर्स्ट लाइफ इंश्योरेंस कंपनी लि. के बोर्ड में नामांकन से है।

[फा॰ सं॰ 13/4/2013-बीओ-I]
विजय मल्होत्रा, अवर सचिव

MINISTER OF FINANCE
Department of Financial Services

New Delhi, the 5th April, 2012

S.O. 849 .—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Government of India on the recommendations of the Reserve Bank of India, hereby declare that the provisions of sub-clause (i) of clause (c) of sub-section (1) of Section 10 of the said Act shall not apply to Bank of Baroda in so far as it relates to the nomination of Shri S.S. Mundra, Chairman & Managing Director of the Bank on the Board of India International Bank Malaysia Bhd. (IIBMB), M/s Baroda Pioneer Asset Management Company Ltd. and M/s India First Life Insurance Company Ltd.

[F.No. 13/4/2013-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 5 अप्रैल, 2013

का.आ. 850 —भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 21क के साथ पठित धारा 21 की उपधारा (1) के खण्ड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करके, एतद्द्वारा, श्रीमती सुजाया दिनेश अल्वा (जन्म तिथि 21.05.1963)को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय स्टेट बैंक के बंगलोर स्थानीय बोर्ड में सदस्य के रूप में नामित करती है।

[फा॰ सं॰ 3/14/2012-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 5th April, 2013

S.O. 850.—In exercise of the powers conferred by clause (c) of sub-section (1) of Section 21, read with section 21A of the State Bank of India Act, 1955 (23 of 1955), the Central Government, in consultation with Reserve Bank of India, hereby nominates Smt. Sujaya Dinesh Alva (DOB: 21.05.1963), as a member on the Bangalore Local Board of State Bank of India, for a period of three years from the date of notification of her appointment or until further orders, whichever is earlier.

[F.No. 3/14/2012-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 9 अप्रैल, 2013

का.आ. 851 —राष्ट्रीय कृषि और ग्रामीण विकास बैंक अधिनियम, 1981 (1981 का 61) की धारा 6 की उप-धारा (1) के खण्ड (ङ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, 27.07.2013 से तीन वर्ष की अवधि के लिए निम्नलिखित व्यक्तियों को राष्ट्रीय कृषि और ग्रामीण विकास बैंक (नाबार्ड) के निदेशक मण्डल में निदेशक के रूप में नियुक्त करती है:–

(i) प्रधान सचिव (कृषि),
कर्नाटक सरकार,
बेंगलुरू।

(ii) अपर मुख्य सचिव (कृषि एवं विपणन),
महाराष्ट्र सरकार,
मुम्बई।

[फा॰ सं॰ 7/1/2013-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 9th April, 2013

S.O. 851.—In exercise of the powers conferred by clause (e) of sub-section (1) of Section 6 of the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981), the Central Government hereby appoints the following persons to be directors on the board of directors of National Bank for Agriculture and Rural Development (NABARD) for a period of three years with effect from 27.07.2013:—

(i) Principal Secretary (Agriculture)
Government of Karnataka, Bengaluru,

(ii) Additional Chief Secretary (Agriculture & Marketing)
Government of Maharashtra, Mumbai.

[F.No. 7/1/2013-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 9 अप्रैल, 2013

का.आ. 852 —राष्ट्रीय कृषि और ग्रामीण विकास बैंक अधिनियम, 1981 (1981 का 61) की धारा 6 की उप-धारा (1) के खण्ड (ङ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, इस अधिसूचना के जारी होने की तिथि से तीन वर्ष की अवधि के लिए निम्नलिखित व्यक्तियों को राष्ट्रीय कृषि और ग्रामीण विकास बैंक (नाबार्ड) के निदेशक मण्डल में निदेशक के रूप में नियुक्त करती है:–

(i) प्रधान सचिव (कृषि),
हिमाचल प्रदेश सरकार,
शिमला।

(ii) प्रधान सचिव (कृषि),
मेघालय सरकार,
शिलांग।

[फा॰ सं॰ 7/1/2013-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 9th April, 2013

S.O. 852.—In exercise of the powers conferred by clause (e) of the sub-section (1) of Section 6 of The National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981), the Central Government hereby appoints the following persons to be directors on the board of directors of National Bank for Agriculture and Rural Development (NABARD) for a period of three years with effect from the date of issue of this notification:—

(i) Principal Secretary (Agriculture)
Government of Himachal Pradesh, Shimla.

(ii) Principal Secretary (Agriculture)
Government of Meghalaya, Shillong.

[F.No. 7/1/2013-BO-I]
VIJAY MALHOTRA, Under Secy.

संचार एवं सूचना प्रौद्योगिकी मंत्रालय
(डाक विभाग)

नई दिल्ली, 25 मार्च, 2013

का॰आ॰ 853 —राजभाषा नियम (संघ के शासकीय प्रयोजनों के लिए प्रयोग), 1976 के नियम 10 के उप नियम (4) के अनुसरण में केंद्र सरकार, डाक विभाग के अधीनस्थ कार्यालय मुख्य पोस्टमास्टर जनरल, राजस्थान सर्किल, जयपुर के निम्नलिखित कार्यालय को, जिनके 100 प्रतिशत अधिकारियों एवं कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:-

1. प्रवर अधीक्षक (डाकघर), उदयपुर मण्डल, उदयपुर - 313004-18

[सं॰ 11017-1/2011-रा॰भा॰]
मीरा हाण्डा, उप महानिदेशक (फिलैटली/राजभाषा)

MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY

(Department of Posts)

New Delhi, the 25th, March, 2013

S.O. 853.—In pursuance of Rule 10(4) of the Official Language (use for official purposes of the Union) Rule 1976, the Central Government hereby notifies following office of the Office Chief Postmaster General, Rajasthan Circle , Jaipur of the Department of Posts where 100% staff has acquired the working knowledge of Hindi:—

1. Senior Superintendent (Post Office) Udaipur Division, Udaipur - 33004-18

MEERA HANDA, Director General (PHILATELY/OL)

युवा कार्यक्रम एवं खेल मंत्रालय

नई दिल्ली, 28 मार्च, 2013

का॰आ॰ 854 —केन्द्रीय सरकार एतदद्वारा राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम 10 के उप नियम(4) के अनुसरण में युवा कार्यक्रम और खेल मंत्रालय के स्वायत्तशासी कार्यालय भारतीय खेल प्राधिकरण-पश्चिमी प्रशिक्षण केंद्र, औरंगाबाद, महाराष्ट्र जिसके 80% से अधिक कर्मचारीवृंद ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[मि॰सं॰ 11011/2/2008-हि॰ए॰]
थंगलेमलियन, उप सचिव

MINISTRY OF YOUTH AFFAIRS AND SPORTS

New Delhi, the 28th March, 2013

S.O. 854.—In pursuance of sub rule (4) of Rule of 10 of Official Language (use for official of the Union) Rule 1976, the Central Government hereby notifies Sports Authority of India—Western training Centre, Aurangabad, Maharashtra an autonomous office of Ministry of Youth Affairs & Sports, whereof more than 80% staff have acquired working knowledge in Hindi.

[F.No. E-11011/2/2008-HU]
THANGLEMLIAN DY. Secy.

विज्ञान और प्रौद्योगिकी विभाग

नई दिल्ली, 5 अप्रैल, 2013

का॰आ॰ 855 —श्री चित्रा तिरूनल आयुर्विज्ञान और प्रौद्योगिकी संस्थान, त्रिवेन्द्रम अधिनियम, 1980 (1980 की संख्या 52) की धारा 6 की उप-धारा (1) और (2) के साथ पठित धारा - 5 के खण्ड-ञ के प्रावधानों के अनुसार श्री जॉय अब्राहम, सदस्य, राज्य सभा को दिनांक 17 दिसंबर, 2012 से उक्त संस्थान के सदस्य के रूप में विधिवत् निर्वाचित किया गया है।

स्थायी पता	दिल्ली का पता
मझूवन्नूर हाऊस	केरल हाऊस
मेलामपरा डाकघर, भरानंगनम,	3, जंतर मंतर रोड,
कोट्टायम-686578	नई दिल्ली-110001

2. निर्वाचित सदस्य के रूप में श्री जॉय अब्राहम का कार्यकाल 01 जुलाई, 2018 तक अथवा सदन की उनकी सदस्यता समाप्त होने तक अथवा उनके राज्य सभा के उपाध्यक्ष अथवा मंत्री बनने पर, इनमें से जो भी पहले हो, होगा।

3. श्री जॉय अब्राहम की सदस्यता श्री चित्रा तिरूनल आयुर्विज्ञान और प्रौद्योगिकी संस्थान, त्रिवेन्द्रम अधिनियम, 1980 के अन्य प्रावधानों के अध्यधीन होगी।

[फा॰सं॰ एआई/एससीटीआईएमएसटी/009/04]
दीपक रतनपाल, उप सचिव

DEPARTMENT OF SCIENCE AND TECHNOLOGY

New Delhi, the 3rd April, 2013

S.O. 855.— In terms of the provisions of Clause-J of Sections-5 read with Sub section (1) and (2) of Section 6 of the Sree Chitra Tirunal Institute of Medical Sciences and Technology, Trivandrum Act, 1980 (No. 52 of 1980), Shri Joy Abraham, Member, Rajya Sabha has been duly elected to be a member of the said Institute w.e.f. 17th December, 2012.

Permanent Address	**Delhi Address**
Mazhuvannoor House,	Kerala House,
Melampara P.O. Bharananganam,	3, Jantar Mantra Road,
Kottayam - 686578	New Delhi - 110001

2. The term of Office of Shri Joy Abraham as the elected member shall be upto 1st July, 2018 and the same shall come to an end as soon as he ceases to be Member of the House, or he becomes Deputy Chairman of the Council of State, or a Minister, whichever is the earliest.

3. Membership of Shri Joy Abraham shall be subject to other provisions of Sree Chitra Tirunal Institute of Medical Sciences and Technology, Trivandrum Act, 1980.

[F.No. AI/SCTIMST/009/04]
DEEPAK RATTANPAL, Dy. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय
(उपभोक्ता मामले विभाग)
(भारतीय मानक ब्यूरो)

नई दिल्ली, 20 मार्च, 2013

का॰आ॰ 856 —भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद् द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए मानक (कों) में संशोधन किया गया/किये गये हैं:—

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1	आई एस 302-2-35 : 2011 की संशोधन संख्या 1	1 फरवरी, 2013	20-03-2013

इस भारतीय संशोधन की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ ईटी 32/टी-81]
डी॰ गोस्वामी, वैज्ञानिक 'एफ' (विद्युत तकनीकी विभाग)

Ministry Of Consumer Affrairs, Food And Public Distribution
(Department Of Consumer Affairs)

BUREAU OF INDIAN STANDARDS

New Delhi, the 20th March, 2013

S.O. 856.—In pursuance of clause (b) of sub-rule (1) of Rules (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standard hereby notifies that amendment to the Indian Standards, particulars of which is given in the Scheduled hereto annexed has been issued:

SCHEDULE

Sl. No.	No. & Year of the Indian Standards	No. & Year of the Amendment	Date from which the Amendment shall have effect
(1)	(2)	(3)	(4)
1	IS 302-2-35 : 2011 Safety of household and similar electrical appliances, Part 2 : Particular requirements, Section 35 Electric instantaneous water heaters (*First Revision*)	1. February 2013	20-03-2013

Copy of the Amendment is available with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional offices: New Delhi, Kolkata, Chandighra, Chennai, Mumbai and also Branch offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Patna, Pune and Thiruvananthapuram.

[Ref. ET 32/T-81]

D. GOSWANI, Scientist 'F' Eleetrotechnical Deptt.

नई दिल्ली, 4 अप्रैल, 2013

का॰आ॰ 857 —भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक (कों) में संशोधन किया गया/किये गये हैं:

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या, वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1	आई एस 4300:1989 वस्तुओं के परिवहन के लिए बॉक्स पैलेट – विशिष्टि (पहला निरीक्षण)	संशोधन संख्या 1 फरवरी 2013	तत्काल प्रभाव से
2	आई एस 5875:1970 खुले हुए डेक सकपर्स की विशिष्टि	संशोधन संख्या 1, मार्च 2013	तत्काल प्रभाव से

संशोधन की प्रतियां भारतीय मानक ब्यूरो मानक भवन 9 बहादुर शाह, जफर मार्ग नई दिल्ली–110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, पूणे, परवाणु, देहरादून तथा तिरूवनन्तपुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ टी ई डी/जी–16]

पी॰सी॰ जोशी, वैज्ञानिक 'एफ' एवं प्रमुख (टी ई डी)

New Delhi, the 4th April. 2013

S.O. 857.—In puruance of clause (b) of sub-rule (1) of Rules (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Scheduled hereto annexed have been issued:

SCHEDULE

Sl. No.	No. Year and Title of the Indian Standards	No. & Year of the Amendment	Date from which the Amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 4300:1989 Box pallets for through transit of goods - Specification	Amendment No. 1, February 2013	With immediate effect
2.	IS 5875:1970 Specification for open-deck scuppers	Amendment No. 2, March, 2013	With immeidate effect

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices-New Delhi, Kolkatta Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune Parwanoo, Dehradun, Thiruvananthapuram.

[Ref. TED/G-16]
P.C. JOSHI, Scientist 'F' & Head (Transport Engg.)

नई दिल्ली, 05 अप्रैल, 2013

का॰आ॰ 858 —भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद् द्वारा अधिसूचित करता है कि जिस भारतीय मानकों का विवरण नीचे अनुसूची में दिया गया है वे स्थापित हो गये हैं:-

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1	आई एस 6303 (भाग 4) : 2013/ आईसी 60086 - 4 : 2007 प्राथमिक बैटरियां भाग 4 लिथियम बैटरियों की सुरक्षा (दूसरा पुनरीक्षण)	-	05 अप्रैल, 2013

इन भारतीय मानकों की प्रतियां भारतीय मानक ब्यूरो मानक भवन 9 बहादुर शाह, जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, पूणे, तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ ईटी 10/टी-16]
डी॰ गोस्वामी, वैज्ञानिक 'एफ' (विद्युत तकनीकी विभाग)

New Delhi, the 5th April, 2013

S.O. 858.—In pursuance of clause (b) of sub-rule (1) of Rules (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued:

SCHEDULE

Sl. No.	No. & Year of the Indian Standards	No. & Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1	IS 6303 (PART 4): 2013/IEC 60086-4: 2007 PRIMARY BATTERIES PART 4 SAFETY OF LITHIUM BATTERIES (SECOND REVISION)	-	05 April, 2013

Copies of these Standards are available for sale with the Bureau of Indian Standards Manak Bhawan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh. Chennai, Mumbai and also Branch Offices: Ahmedabad. Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. ET 10/T-16]
D. GOSWAMI, Scientist
Scientist 'F' (Electrotechnical Deptt.)

श्रम और रोजगार मंत्रालय

नई दिल्ली, 14 मार्च, 2013

का॰आ॰ **859** —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बड़ौदा पूर्वी ग्रामीण बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट (संदर्भ संख्या 56/07) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-03-2013 प्राप्त हुआ था।

[सं॰ एल॰-12011/17/2007-आई आर (बी-I)]
सुमति सकलानी अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 14th March, 2013

S.O. 859.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 56/07) of the *Cent. Govt. Indus. Tribunal-Cum-Labour Court,* KANNUR as shown in the Annexure, in the industrial dispute between the management of *Baroda Purvi Gramin Bank* and their workmen, received by the Central Government on 14/03/2013.

[No.-L-12011/17/2007-IR(B-I)]
SUMATI SAKLANI Section Officer

ANNEXURE

BEFORE SRI RAM PRAKASH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, KANPUR

Industrial Dispute No. 56/07

Between

Kshetriya Sachiv,
Baroda Purvi UP. Gramin Bank Employees Union,
75 Satya Sadan,
Opposite Ratna Devi School,
Achalpur, Kadipur,
Pratapgarh.

And

Adhyaksh,
Baroda Purvi Gramin Bank,
Head Office, A-1 Civil Lines,
Raibareli

AWARD

1. Central Government, MoI, *vide* notification No. L-12011/17/2007-IR B-1, dated 27.11.07 has referred the following dispute for adjudication to this tribunal—
2. Whether the action of the management of Baroda East Uttar Pradesh Gramin Bank Pratapgarh, in terminating the services of Sri Virender Kumar through an oral order dated 19.05.05, is fairlegal and justified? If not to what relief the workman concerned is entitled?
3. It is unnecessary to give full details of the case as in the instant case after exchange of pleadings between the parties; several opportunities were given to the union to adduce evidence in support of its case. The case was however taken on 09.11.12 and 21.12.11, but neither the workman nor any on behalf of the Union appeared in the case before the tribunal to advance the cause of action nor did they adduce any evidence in support of their claim.
4. Therefore, it is a case where no evidence has been adduced by the claimant or on behalf of the union

espousing the cause of action of the claimant. It is settled principle of law that if a party claiming some relief from any court fails to adduce evidence in support of its case will fail. Therefore, applying the settled legal position in the instant case, Tribunal is of the view that as there is no evidence either from the side of the Union or from the side of the workman, therefore, it is held that neither the union nor the workman can be held entitled for the relief claimed by them in the case and the reference is bound to be answered againt the union/workman for want of evidence.

5. Reference is therefore, decided against the union and in favor of the opposite party.

RAM PRAKASH, Presiding Officer

नई दिल्ली, 14 मार्च, 2013

का॰आ॰ 860 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **जरनल मैनेजर**, बी॰एस॰एन॰एल॰ झाँसी जोन, झाँसी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण **लखनऊ** के पंचाट (संदर्भ संख्या 65/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को **08-03-2013** को प्राप्त हुआ था।

[सं॰ एल॰-40012/193/2002-आई आर (डी यू)]
जोहन तोपनो, अवर सचिव

New Delhi, the 14th March, 2013

S.O. 860.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 65/2004) of the Central Government Industrial Tribunal cum Labour Court Lucknow as shown in the Annexure, in the industrial dispute between the employers in relation to **t**he General Manager, BSNL, Jhansi Zone, Jhansi and their workman, which was received by the Central Government on 08/03/2013.

[No. L-40012/193/2002-IR(DU)]
JOHAN TOPNO Under Sec.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

Present

Dr. MANJU NIGAM, Presiding Officer

I.D. No. 65/2004

Between

Shri Bhagwan Das S/o Sri Ram Kishan & 10 others *viz.*

1. Shri Jugal Kishor Shri Halke Kushwaha
2. Shri Ashok Kumar S/o Lakshmi Narayan
3. Shri Ishwar Prasad S/o Shri Sunni Lal
4. Shri Narendra Kumar S/o Virendera Kumar
5. Shri Dayal Das S/o Bhagwan Das
6. Ravindra Kumar S/o Shri Ramesh Chandra Sharma
7. Shri Dilip Kumar S/o Shri Kaushal Kishore
8. Shri Prem Narayan S/o Shri Kalicharan
9. Shri Bahoran Singh S/o Bhagirath
10. Shri Mahesh Prajapati S/o Manohar Lal
    Through Bhartiya Gramin Majdoor Sangh

And

1. The General Manager
   Jhansi Zone, BSNL, Jhansi
2. A.G.M. Jhansi Zone
   BSNL, Jhansi

AWARD

1. The present claim has been filed by the workmen Bhagwan Das & 10 others under Section 33 A of the Industrial Disputes Act, 1947 for alleged contravention of the provisions contained in the Section 33 of the Industrial Disputes Act, 1947 by the General Manager, Jhansi Zone, BSNL, Jhansi & A.G.M. Jhansi Zone, BSNL, Jhansi.

2. The case of the workmen, in brief, is that they have been working with the management of BSNL since year 1996 continously; and accordingly, they demanded for regularization of their services and moved representations before the concerned authorities. When nothing constructive was done by the opposite party the workmen preferred an application before the Assistant Labour Commissioner (Central), which resulted into nullity and finally the matter was referred to the this CGIT-cum-Labour Court, Lucknow for adjudication vide order No.-L-10012/192/2002-IR(DU) dated 26.02.2003; and the same is pending as I.D. No. 37/2003. The workmen have alleged that during pendency of the said industrial dispute the opposite party has terminated their services in violation to the provisions contained in Section 33 A of the Industrial Disputes Act, 1947. Hence, the workmen have prayed that the opposite party be directed to reinstate the workmen with consequential benefits

3. The management of the BSNL has denied the claim of the workman by filing it Written Statement; wherein its has submitted that there is due procedure for appointment in the BSNL and the workmen have never been appointed by it, in as much as they have not gone through the due procedure for appointment. It has further submitted that the workmen never worked with it and therefore there arise no question for their regularization; and also that they were not in the employment of the opposite party on the date of reference or before, therefore, there arise no question of their termination. It has further been submitted that the present application under Section

33 A of the Act is not maintainable, as the union has already withdrawn/not pressed the I.D. No. 37/2003, therefore, the present is liable to be dismissed as the basis of present application *i.e.* ID No. 37/2003 does not exist. Accordinly, the management has prayed that the application of the workman be rejected without any relief to them.

4. The workmen have filed rejoinder; wherein it has stated nothing new apart from reiterating its submissions already made in the application.

5. The workman has filed list of documents *vide* dated 04.04.2006, paper No. C-25, in support of its claim; whereas the management has filed none. Various workmen have examined themselves *viz.* Dilip Kumar, Narendera Kumar, Jugal Kishore, Bhagwan Das, Ashok Kumar, Bharoan Pal, Ishwar Prasad Mishra, Ravinder Kumar Sharma, Prem Narayan, Dayal Das, Mahesh Kumar, in support of their case; whereas the management of BSNL examined Shri, C.L. Awasthi, JTO in support of their case. The parties cross-examined the witnesses of each other and argued their case.

6. Heard argument of the parties and perused entire evidence on record.

7. The authorized representative of the workmen has submitted that the workmen have been working with the opposite party since 1996 and they demanded for regularization of their service. When the management did not heed to their demand they preferred a complaint before the Assistance Labour Commissioner (Central), which, on failure to conciliation finally led to reference *vide* order No. L-10012/193/2002-IR (DU) dated 26.2.2003/5.3.2003. The authorized representative of the workmen has submitted that the appropriate Government referred the matter to adjudicate the right of the workmen for their regularization and the same was registered before this Tribunal *vide* ID No. 37/2003. He has further urged that during pendency of the said industrial dispute the management of the BSNL terminated the services of the workmen and in doing so they have violated the provisions of Section 33A of the Industrial Disputes Act, 1947.

8. In rebuttal, the authorized representative of the management has argued that the workmen have neither been appointed in any capacity nor they have undergone the prescribed procedure for recruitment in the BSNL; accordingly, he has submitted that when they have neither been appointed by the opposite party, nor worked with it, therefore, there arises no question of terminating their services at any point of time *i.e.* during pendency of the industrial dispute. It has been further argued that the present application under Section 33 A of the Act is not maintainable, as the union has already withdrawn/not pressed the I.D. No. 37/2003, therefore, the present is liable to be dismissed as the basis of present application *i.e.* ID No. 37/2003 does not exist.

9. The management of the BSNL has taken the preliminary plea/objection that the present application under section 33 A is not maintainable for the reasons that the union which espoused the I.D. No. 37/2003 has already "not pressed" the said industrial dispute and accordingly, the workmen concerned cannot and move the present application. It has argued that is was the union that can move the present application for alleged violation of Section 33 of the Act; but since it has been preferred by the workmen concerned, therefore, not maintainable. In rebuttal the authorized representative of the workmen has argued that the workmen have preferred the present application for violation of section 33 of the Act jointly through Bhartiya Gramin Majdoor Sangh, which is proper and maintainable in terms of the provision provided in Section 33 A of the Act.

Section 33 A of the Industrial Disputes Act. 1947 provides provision for adjudication a matter for alleged alteration in the serivice condition of an employee by the employer during pendency of proceedings before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal. The said section of the Act is quoted thereunder:

33A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceeding.—Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner,—

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provision of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly.

A bare reading of above provision makes it crystal clear that where an employer contravenes the provisions of Section 33 *i.e.*alters the service condition in respect of any workman, which is prejudicial to him during pendency of any proceedings before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal then such a workman, aggrieved by such contravention, my make a compliant in writing, to the forum before which the

proceedings are pending. There is nothing which debars the individual workman to come forward and lodge the complaint against contravention of Section 33 of the Act nor there any binding that the parties to the proceedings pending and that making complaint should be the same. Rather it is very specifically given that " any employee aggrieved by such contravention, may make a complaint in writing". No where in the Section 33 it is provided that if the pending proceeding have been instituted by the Union then the workman whose cause has been espoused in the said proceeding cannot move a compliant independently under Section 33 A for alleged contravention of provisions contained in Section 33 of the Act.

Therefore, in view of the provisions laid down in the Section 33 A of the Industrial Disputes Act, 1947 , I am of the considered opinion that the objection of the management regarding non-maintainability of the present complaint is devoid of merit and is liable to be rejected.

10. The workmen in the evidence has specifically stated that they have been engaged by the SDO *viz.* Munnawar Khan and were paid on ACG-17 voucher at variable rate of Rs. 500/- to 700/- per month. They have stated that they used to do maintenance work such as upkeep of machines at the exchange, operating generator and its maintenance and provide customer services. *i.e.* to attend their complaint etc.; They also stated that there was some scheme for regularization; but they were deprived of the same. Moreover, they have also stated that their services have been terminated *w.e.f.* 30.03.2003 and prior to this date they worked continously with the management of BSNL. In rebuttal the management examined Shri C.L. Awasthi, JTO who stated that the workman Bhagwan Das and 10 others never worked in any Exchange a Casual labour, they were neither appointed nor removed, nor any payments were made to them by the BSNL. It was further denied that the workmen were terminated during pendency of ID No. 37/2003. In cross-examination the management witnesses has disputed the genuineness of the documents filed by the workmen.

11. In nut shell the case of the workmen is that they have been engaged by the management of the BSNL for long time and when a reference to adjudicate their right for regularization was pending with this Tribunal the management terminated their services, violating provisions contained in the Section 33 of the Industrial Disputes Act,1947. The management has denied of their engagedment or termination all together at any point of time. The provisions contained in Section 33 of the Act is as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.— (1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall, —

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal otherwise, any workman concerned in such dispute.

Save with the express permission in writing of the authority before which the proceeding is pending.

A bare perusal of the above noted section, it becomes apparent that it relates to the change in the service condition of an employee by the employer during pendency of any proceedings before a conciliation officer, board, an arbitrator, Labour, Court, Tribunal or National Tribunal and in the event of such contravention the aggrieved employee may make a complaint in writing to the authority before whom such proceedings are pending. Further, for invoking provisions contained in this section it is also very much necessary that on the date of arise of cause of action there should be employee and employer relationship between the complainant and the management *i.e.* the employee invoking provision should be in employment of the opposite party, no matter it is engagement or appointment or it is regular or irregular in nature. Further, the provision contained in Section 33 A does not put any bar that it may not be invoked by the casual employee.

11. In the instant case, the workmen have pleaded that they have been in the employment of the opposite party on the date when proceedings in wake of reference made by the appropriate Government was pending before this Court and the mangement terminated their services during pendency of the said industrial dispute No. 37/2003 before this Tribunal without express permission, in writing, of this Court and thereby has violated the provisions contained in Section 33 of the Act. Also, in their examination - in - chief they have stated that their services have been terminated *w.e.f.* 30.03.2003 during pendency of I.D. No. 37/2003. Per contra, the management has denied their contention through their pleading and oral statement on oath by stating that the workmen concerned were neither engaged nor appointed by the management nor their services were terminated by the management at any point of time. Hence, in the present case, in view of denial of the management that the workmen have neither been appointed nor been engaged as casual labour not been terminated at any point of time, it was incumbent upon the workman to lead evidence to the effect that they were actually in the employment of the apposite party on the date when the case *i.e.* ID No. 37/2003 was referred to this Tribunal for

adjudication as well as on the date their services were allegedly terminated by the management of the BSNL *i.e.* on 30.03.2003. The workmen have filed copy of certain certificates and maintenance slips of the generator; but the same has been disputed by the management witness.

12. From the perusal of record it is clear that on application C-57, in I.D. No. 37/2003, by the workmen, this Tribunal *vide* order dated 23.11.2004 has ordered the management to file the documents summoned by the workman to substantiate the contentions of the workman that they were in the employment of the opposite part. There is an affidavit, A1-32 of the authorized representative of the workmen to the effect that this Tribunal, in ID. 37/2003 had directed the opposite party of file documents requested by the workmen to sustain their version; but the management failed to comply with the same till date.

Hon'ble Gujrat High Court in 2010 AIR SCW 542 Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. Therefore, in view of the case law cited above, it is very much clear that the official documents which could prove that the workmen were in the continuous service of the management were in power and possession of the opposite party and access to them were difficult for the workman then when the workman made an application to summon the documents from the management to substantiate its continuous working and employment with the apposite party; and the Tribunal after inviting management's objection on the summoning application ordered specifically to file the documents requested by the workman than it was necessary for the management to file relevant documents, firstly in compliance of the Tribunal's order and secondly, to nullify the contentions of the workmen that they continuously worked with the management since their engagement and they were not in service during pendency of the I.D. 37/2003 and resultantly their services were not terminated in violation to the provisions contained in Section 33 of the Act.

13. I have gone through material on record in present file as well as order sheets etc. in I.D. No. 37/2003. It reveals that the workman made an application (in ID. No.37/2003) C-57 for summoning certain documents and calling certain witnesses, with whom the workmen alleged to have worked *viz.* Shri C.L. Awasthi, Jamuna Prasad, Munnawar Khan, K.N. Shukla, Manohar Lal Prajapati, Ram Narayan Khare, Ramesh Khare, Rajole, Jitendera Kumar, Khub Chand, Ram Kishun, Kamal Das, Bhagirath, Dhanwantar, Chaturbhuj, Kamta Prasad, Mahesh Chandra and Daya Ram for cross- examination from the management. The managment filed C-59, objection thereto; wherein it opposed summoning of documents as well as witness from the management. After hearing the parties following order was passed by my predecessor *vide* order dated 23.11.2004:

> "So far as request for summoning record, the OP has suggested that the voluminous documents are prepared by the worker and are forged in circumstances it is required that documents mentioned in C-57 be got summoned, in possession OP which are A to E pare 1 of the application C-57.
>
> As far as summoning of witness for cross-examination is concerned I am of the considered view that those witnesses who are shown in application C-57 cannot be summoned for cross- examination as they have not been examined by the management as yet. If the management opts to examine these witnesses the worker shall have apportunity to cross-examine them."

The management did not file documents; rather preferred an application C-67 to recall order dated 23.11.2004, showing their inability to filed documents ordered. The workman filed its objections *vide* application C-69. The Said application C-67 was rejected by my predecessor *vide* order dated 07.03.2005 as under:

> " The said Statement is not on oath. Result is that the statement without affidavit is not trust worthy. The conclusion is that the management has failed to comply the courts' orders. The order dated 23.11.2004 cannot be recalled. Application, C-67 & C-69 is accordingly disposed of."

Thus, from the above order sheets it is very much clear that the workman well discharged the burden that lied upon them by summoning documents from the management and the failure of the management to file the summoned documents even after specific orders of the Tribunal leaves no room but to draw adverse inference against the management and accept the statement given by the workman on oath before this Tribunal.

14. The workmen in their examination-in-chief have stated that they have worked as casual labour in the telephone exchange ever since year 1996. There they used to operate generator, check fault, make joint, dig out ditch etc. They have stated that their attendance was marked on the attendance register and were paid on monthly basis. They have stated that their services were terminated *w.e.f.* 30.3.2003. In wake of non-filing of muster roll/attendance register in spite of directions of the Court, the statement of the workman are liable to be accepted. Moreover, the workman have also filed copy of servicing slip, in original, in respect of generator kept in the telephone exchange, which goes to show that their servicing was done and

report was submitted to the workman concerned. There is no rebuttal from the management in this regard. Therefore, this goes to show that they were in employment of the management on the date when their case was referred to this Tribunal for adjudication and this find support from the language of the schedule of reference, which as under:

> "Whether the action of the general management (staff), BSNL, Jhansi in not regularizing the services of Sh. Bhagwan Dass S/o Sh. Ram Bhishon and 10 others (as per list is legal and justified? If not, to what relief the workmen are entitled to?"

The above language of the schedule of reference goes to show that the workmen were in the employment of the opposite party and if it is alleged by the workmen that services have been terminated by the opposite party then there is not doubt that their services have been terminated during pendency of the proceedings in respect of above reference.

15. It is well settled that if a party challenges the legality of any action of the opposite party, then the burden lies upon him to prove illegality of the action and if no evidence is produced by the party invoking jurisdiction of the court, the claim must fail. In the present case burden was on the workmen to set out the grounds to challenge the validity of their alleged termination on 30.03.2003 and thereby violating the provisions of Section 33 of the Industrial disputes Act and for this they were initially to substantiate that they were in the employment of the opposite party on the date of reference of the industrial dispute No. 37/2003 and also on the alleged date of termination *i.e.* 30.03.2003. In this regard the workman filed certain documents which were disputed by the management, therefore, the workman summoned certain documents to substantiate their version and the Court ordered the management to file the same; but the management failed to comply with the directions of the Court, which leads to draw adverse inference against the management and to take into account the statement of the workmen given on oath. The workmen through their oral testimony have well proved that they have been engaged by the BSNL to carry out casual work and were paid accordingly, and when they sought regularization of their services, and an industrial dispute in this regard was pending before this Tribunal, the services of the workmen were terminated in violation to the provisions contained in Section 33 of the Act.

16. In view of the facts and circumstances discussed hereinabove, I am of the considered opinion that the workman Bhagwan Das and 10 others were in the employment of BSNL and their services were terminated by the opposite party duing pendency of I.D. No. 37/2003 reference No. L-10012/193/2002-IR(DU) dated 26.02.2003, in contravention to the provisions laid down in Section 33 of the Industrial Disputes Act, 1947. Accordingly, the complaint of the workmen under Section 33 A of the ID Act, 1947 for alleged violation of the Section 33 of the Act, is liable to be allowed. Resultantly, the workmen concerned are entitled to be reinstated into services. They shall be entitled for continuity in service and other consequential benefits less back wages as they were no regular employee; rather were casual employees, hence, principle of no work no pay shall be applicable to them. The compliance be ensured within four weeks from publication of the award.

17. Award as above.

LUCKNOW — DR. MANJU NIGAM,
18-02-2013 — Presiding Officer

नई दिल्ली, 14 मार्च, 2013

का॰आ॰ 861 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **टेलीकाम डिस्ट्राक्ट मैनेजर, सागर** के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या सी॰जी॰आई॰टी॰/एल॰सी॰/आर॰/11/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 08/03/2013 को प्राप्त हुआ था।

[सं॰ एल-40012/87/2002-आईआर(डीयू)]
जोहन तोपनो, अवर सचिव

New Delhi, the 14th March, 2013

S.O. 861.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/11/2003) of the Central Government Industrial Tribunal cum Labour Court Jabalpur as shown in the Annexure, in the Industrial dispute between the Telecom District Manager, Sagar and their workman, which was received by the Central Government on 08.03.2013

[No. L-40012/87/2002-IR(DU)]
JOHAN TOPNO Under Sec.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

No. CGIT/LC/R/11/2003
Presiding Officer: Shri Mohd. Shakir Hasan

Shri Halku Sahu,
S/o Shri Kanchedilal Sahu,
Bunglow No. 50,
Infront of SP Bunglow,
Sagar (MP) ...Workman

Versus

Telecom District Manager,
Sagar (MP) ...Management

AWARD

Passed on this 12th day of February 2013

1. Present reference is received under letter dated 9-1-2003 from the Government of India, Ministry of Labour, New Delhi. As per Notification No.L-40012/87/2002-IR(DU), the dispute is referred in this Tribunal. The dispute under reference is whether the action of the management of Telecom District Manager, Sagar (MP) Deptt. of Telecom now converted into Telecom District Manager, Sagar (MP) BSNL in terminating the services of Shri Halku Sahu S/o Shri Kanchedilal Sahu *w.e.f.* July 1990 (16-7-90) and not regularizing as regular employee is justified? If not, what relief the workman is entitled to?

2. After receipt of the reference and service of notice to the parties, Ist party workman submitted statement of claim dated 24-2-2002. The case of the 1st party workman is that he was engaged as casual labour in January 1985. Since then he was continuously working with 2nd party till july 1990. His name was entered on muster roll. His work was without any complaint. The scheme of regularization of the employees of Telecom Deptt. was introduced in 1989. The workman claims he was not regularized under said scheme. Instead of regularizing his services, he was discontinued from July 1990 as per the oral order. No order of termination in writing was given to him. The 2nd party violated under Section 25-F, 25-N of the I.D. Act 1947. He is relying on copy of muster register. The workman prays for reinstatement with full back wages setting aside order of his termination.

3. 2nd Party Management filed Written Statement as pages 8 to 8/2 opposing the contention of the Ist party workman. It is submitted that the management of IInd party carries telecom activities in MP Telecom Circle having larger area in the country. For development of telecom facilities, ambitious planning was undertaken. To complete said project casual workers were engaged. The casual workers were engaged on daily payment basis. They were never engaged for regular work. As and when project were completed, casual workers were not required to continue. There was no need to keep casual workers without work, hence they were discontinued.

4. It is further submitted that Ist party workman was never appointed on any post in the department. He has not worked for specific target project. The employment was of casual nature for short period. The management submits that the Ist party workman had worked 12 days in 1985, 332 days in 1986, 89 days in 1987, 179 days in 1988, 348 days in 1989 and 186 days in 1990.

5. It is submitted that Ist party does not fulfill the condition of the Scheme as per directions of the Hon'ble Supreme Court. He is not entitled to regularization. The casual labours who are engaged prior to 30-3-1985 continued as casual workers on 17-11-89 and who completed 240 days in a year are entitled to benefit to said scheme. Casual workers engaged between 31-3-85 to 22-6-88 further continued as per order dated 25-6-93 are extended benefit of casual workers. It is submitted that the applicant was willfully absent time to time inspite of notice issued by SDOT, Sagar. As per the said authority, the work is not available, the services of workman are not required. The provisions to Section 25-F and N of I.D. Act are not violated. It is submitted that the Ist party is not entitled to reinstatement in the relief.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) whether the action of the management of Telecome District Manager, Sagar(MP) Deptt. of Telecom now converted into Telecom District Manager, Sagar (MP) BSNL in terminating the services of Shri halku sahu S/o Shri Kanchedilal Sahu *w.e.f.* July 1990 (16-7-90) and not regularizing as regular employee is legal.	Termination of services of Shri Halku Sahu is illegal.
(ii) If so, to what relief the workman is entitled.	Ist party workman is entitled to retrenchment compensation of Rupees On Lakh.

7. From pleadings between the parties, the termination of Ist party workman from July 1990 is in dispute. As per the Ist party workman, his services are terminated without issuing notice. That he was engaged as casual labour on muster roll in January 1985 and continuously worked till July 1990. Workman filed affidavit of his evidence which is consistent with his pleadings that he was working on establishment of Ilnd Party from January 1985 to July 1990. His name was on muster roll maintained by Party No. 3 & 4. His services were orally terminated without notice. The scheme for regularization was introduced in 1985. He was not given its benefit. He was illegally terminated. In cross-examination, Ist party workman says no advertisement was issued for his appointment, his name was not sent through Employment Exchange, no written or oral exam was conducted. He received wages for working days. The Ist party has produced zerox copy of the Identity Card Pg (9/2). Working days of the workman are shown in it. There is no cross-examination of Ist party workman about his working days stated in affidavit of his evidence and therefore it needs to be accepted. The management filed affidavit of evidence of witness Shri R.G. Gohe. The management's witness says that the

workman was engaged for laying down telephone cable of particular project. That project is over and services of the workman were discontinued. The affidavit of management witness is not specifically stating work of which project were undertaken, how it is different from the regular activities undertaken by the telephone department, whether the said work was not regular work carried by the telecom department.

8. Management's witness is not cross-examined. His evidence has gone unchallenged. However the evidence of management's witness is not sufficient to establish that special project different from the activities carried out regularly by the telecom department was undertaken. The contentions of the IInd party management in that regard cannot be accepted.

9. The evidence of Ist party/workman that his services are discontinued without issuing notice under Section 25-F of the I.D. Act is not shattered rather evidence of management's witness is also corroborating the testimony that the services of the workman were discontinued. The evidence of management witness is silent about compliance of Section 25-F of the I.D. Act. For above reasons, I hold that the termination of the services of Ist party workman without issuing notice under Section 25-F under the I.D. Act is illegal.

10. Learned counsel for IInd party Mr. Kapoor relied on issue held in case of Punjab State Electricity Board and another Vrs. Sudesh Kumar Puri reported in 2007(2) Supreme Court Cases 428. The Lordship of the Apex Court dealing with the question of retrenchment observed with doesnot amount to engagement. That the case was not one of contract labour. There was an agreement governing the engagement, payment was made per meter reading at a fixed rate and there was no regular employment ever offered to any of the respondents. It was held that provisions of Section 2(oo)(bb) of the Act clearly apply to the facts of the case.

11. The facts of the present case are different. The workman was not engaged as piece rated employee. Therefore the ratio of above said case cannot be applied.

12. Copy of judgment delivered by my colleague in similar matters *i.e.* in Reference No. 1, 2, 3, 4, 8, 9, 10, 12, 13, 14, 15, 17, 18, 19, 20, 21/03 & 117/02 is brought to my notice. The said matter pertains to employees working in Telecom District Manager, Sagar, MP, Reinstatement of workman were directed with full back wages except Shri Ghansham Das and Shri Dhan Prasad Prajapati for non-compliance of Section 25-F of I.D.Act.

13. Counsel for management Mr. Kapoor pointed out my attention to judgment by Hon'ble Apex court in Civil Appeal No. 3815 of 2010 in the matter of Senior Superintendent Telegraph (traffic) Bhopal Versus Santosh Kumar Seal and others The Lordship considering the legal position, ordered that the workman were engaged as daily wagers about 25 years back and they worked hardly for 2-3 years. Relief of reinstatement and back wages to him cannot be said to be justified and instead monetary compensation would subserve the ends of justice. The Lordship awarded compensation of Rs. 40,000/-to each of the workmen.

14. In the present case, Ist party workman was working as casual labour on muster roll during Jan. 85 to July 90. The services of Ist party workman are terminated without notice under Section 25-F of I.D. Act almost 22 years back. He had worked with the IInd party for about 5 years. Considering above facts, in my considered view Ist party workman cannot be reinstated in service. Learned counsel for the management Mr. Kapoor had pointed out that the working of the Telecom Department is completely changed and manual working is not required. Considering the above aspects, instead of reinstatement, compensation of Rs. One Lakh would meet the end of justice. Accordingly I record my finding on Point No.2, in the result, I pass the following award.

The termination of Ist party workman Shri Halku Sahu is illegal for violation of Section 25-F of I.D.Act. The IInd party shall pay compensation of Rs. One Lakh to the Ist Party workman within one month. In case of default, the said amount shall carry interest @ rate of 9% .

R.B. Patle, Presiding Officer

नई दिल्ली, 14 मार्च, 2013

का॰आ॰ 862 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जनरल मैनेजर, कोरडाइट फैक्टरी, नीलगिरिज और अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 11/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 08-03-2013 को प्राप्त हुआ था।

[सं॰ एल-14012/17/2011-आईआर(डीयू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 14th March, 2013

S.O. 862.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/2012) of the Central Government Industrial Tribunal cum Labour Court Chennai as shown in the Annexure, in the Industrial dispute between the employers in relation to the General Manager, Cordite Factory, Nilgiris and others and their workman, which was received by the Central Government on 08.03.2013

[No. L-14012/17/2011-IR(DU)]

JOHAN TOPNO, Under Sec.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Friday, the 22nd February, 2013

Present : A.N. JANARDANAN
Presiding Officer

INDUSTRIAL DISPUTE No. 11/2012

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Cordite Factory and their Workman]

Between

Smt. R. Arthi : 1st Party/Petitioner

Vs.

1. The General Manager : 2nd Party/1st Respondent
Cordite Factory
Aravankadu
Nilgiris-643202

2. M/s Alert Security Services : 2nd Party/2nd Respondent
No. 106, Sowrimuthu Street
Red Fields
Coimbatore-641045

Appearance:

For the 1st Party/Petitioner : Shri S. Vaidyanathan, Advocate
For the 2nd Party/1st Management : Mr. A Ashok Kumar, Advocate
For the 2nd Party/2nd Management : Set Ex-parte

AWARD

The Central Government, Ministry of Labour & Employment *vide* its Order L-14012/17/2011-IR(DU) dated 06.02.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of M/s Alert Security Services, Coimbatore, a Cordite Factory Hospital Management, Arvankadu in terminating the services of Smt. R. Arthi w.e.f. 13.10.2010 without following the provisions of Section 25(F) of Industrial Dispute Act, 1947 is justified or not? What relief the workwomen is entitled to?"

2. After the receipt of Industrial Dispute, this Tribunal numbered it as ID 11/2012 and issued notices to both sides. Both sides entered appearance through their respective counsel and filed their Claim, Separate Counter Statements and Reply Statement, as the case may be.

3. The averments in the Claim Statement bereft of unnecessary details are as follows:

The petitioner joined the services of Cordite Factory (Hospital) as recruited through M/s Alert Security Services on 16.02.2008. To deprive employment under the Cordite Factory the so-called contract labour system was used to be introduced to get the work done by them despite entire payment made only by the Cordite Factory. She was required by the Cordite Factory to work through VIP Enterprises, Dharma Agency, ASR Constructions and finally M/s Alert Security Services R2 as Contractors. With the change of the Contractors even, employees continued to remain the same only. It is defeating provisions of labour laws. Petitioner was employed as a Ward Sahayak at the Cordite Factory Hospital, Aravankadu. During her three years of service there were no adverse remarks against her. Upon insistence of the Cordite Factory the so-called Contractor issued a certificate to make the employees a scapegoat. The Contract Labour System is a ruse and a camouflage. Petitioner has undergone in-house training for para-medical staff conducted by the Cordite Factory, given only for permanent employees and not for contract employees. The entire Attendance Register and Wage Slip are with the Cordite Factory. On 13.10.2010 Hospital Staff informed that she was dismissed from service. Her work has been perennial in nature. During conciliation of the dispute raised, she was given employed on 17.01.2011 by the Factory. Orders of dismissal and reinstatement were issued by the Chief Medical Officer of the Factory, which is not necessary if she is a contract employee. On the very next day of reinstatement she was disengaged by the Factory. Before the Conciliation Officer on 20.04.2011, Sivasankara, HOS (Vigilance) and CG representing Cordite Factory on behalf of the General Manager and the so-called Contractor agreed to reinstate her. She was given employment on 27.05.2011 for three days and again she was terminated from service on 28.05.2011, to overcome the defects that the petitioner could not be terminated and reinstated by the First Respondent, First Respondent sent letter dated 28.05.2011 to R2 to replace the petitioner. In the separately maintained Attendance Register and Payment Register by the Cordite Factory, it started affixing the Rubber Stamp of M/s Alert Security Service in the Attendance Register meant for persons engaged by them. Attendance Register will show that the work performed by the petitioner was countersigned by the Cordite Factory officials. She is in possession of the ID Card issued by the Cordite Factory for three days to work in the Hospital. Contract is sham and nominal. The entire hospital work was performed by the petitioner. No Contractor has any separate hospital to engage the petitioner. Her demand for Experience Certificate from the Cordite Factory was being responded saying to get from the Contractors. There is

contract of service and not contract for service. Except R2 No Contractor had valid registration under Contract Labour Abolition Act First Respondent engaged the petitioner in service directly. Petitioner in an employee of the First Respondent. She completed 480 days of continuous service in a period of 24 calendar months and is deemed to have attained permanent status under R1. She was getting salary of Rs. 5,360/- per month at the time of disengagement. No Charge Sheet was issued to her nor was any enquiry conducted. Non-compliance of Section-25(F) renders the termination *void abinitio*. The same is to be set aside and she is to be reinstated into service w.e.f. 13.10.2010 with all benefits. Even if there is a Contract Labour System, for non-compliance of Section-25F of the ID Act, R1 is liable to grant the relief in terms of Section-21(4) of the Contract Labour (Regulation and Abolition), Act 1970.

4. Counter Statement averments of the First Respondent are as follows:

The ID is neither maintainable in law nor on facts and is to be dismissed in-limini. The First Respondent had entered into service contract with M/s ASR Rice Mundy and Construction represented by Sri Arockiadoss Simon (ADS), Nilgiris as per supply order dated 07.12.2009 for a period from 07.12.2009 to 30.12.2010, which was subsequently short closed on 26.05.2010 due to unsatisfactory performance of the contract. The terms and conditions of the service contract the job requirement involved (a) assisting MO/Ward Sister in attending the patients (b) cleaning and making beds for patient ensuring non concealment of any unauthorized articles in bedding of the patients (c) collecting kits for patients from Ward Master, etc. upto (k) as described in the Claim Statement. M/s ADS had deployed the petitioner along with 12 others at the Cordite Factory Hospital. Later came M/s Alert Security Services as per order dated 23.06.2010 from 23.06.2010 to 31.01.2011. He also engaged the petitioner till 2011. The contract as above was concluded every year through an open tender. The successful tenderer was at liberty to employ any person to execute the work. The Management has had no role in the engagement of the contract labourers. It only assesses whether the terms and conditions as set out in the contract are fulfilled or not, only to the extent of fulfillment of which the payment is made to the Contractors. Petitioner cannot claim parity with regular employees of the Respondent. First Respondent had made hospital service contract with M/s ASR Rice Mundy and Construction represented by Sri Arockiadoss Simon, Nilgiris which was subsequently short closed by letter dated 26.05.2010 due to continuing unsatisfactory performance of the contract. A contract was further entered with M/s Alert Security Services, Coimbatore for the work at CFH for whole job basis to a period of one year. In both the contracts the petitioner was engaged by the Contractors to execute the contract and not with the First Respondent. The only requirement of the First Respondent is that Contractors have to get the PVR (Police Verification Report) of the labourers before engaging them in the First Respondent premises, being a defence installation for security purposes. The Contractor supervises the work and disburses wages directly to the contract labourers. Petitioner is not a Central Government Employee. Petitioner was governed by service conditions or laid down by the Contractor and not by the service conditions or recruitment rules applicable to regular employees. First Respondent ensures payment of minimum wages to the petitioner and compliance of statutory obligations by Contractors. Presumptions raised by the petitioner are frivolous and unconstitutional. Petitioner was under the employment of various contractors only. The dispute is between petitioner and R2 having employer-employee relationship interse. She is workman of M/s Alert Security Services. Section-25 of the ID Act is applicable only to 2nd Respondent with respect to the petitioner. As per terms and conditions of Supply Order, selection/replacement of contract labourers is the sole responsibility of the Second Respondent. The claim is to be rejected.

5. Second Respondent's contentions in its counter statement, briefly read as follows:

Second Respondent is a registered contractor of the First Respondent and the former took the contract on 01.07.2010. The petitioner and other employees who were already employed under the First Respondent were asked to be engaged by Second Respondent by R1. When the contract was awarded Second Respondent was asked to absorb the existing employees as they were experienced and working under the First Respondent, which did not allow R2 to bring a new hand or to replace the person like the petitioner. As instructed by R1 petitioner was not given employed and R2 is not responsible for the removal of Smt. R. Arthi. R2 was willing to continue her in the First Respondent but it ultimately declined to provide employment to her. The claim of the petitioner only against R2 is to be rejected.

6. Reply Statement averments briefly read as follows:

Second Respondent has filed a counter supporting the petitioner. As admitted by R1 in the Counter Arthi has committed misconduct and R1 directed R2 to replace Arthi. It shows that petitioner was an employee under R1 and R1 has the final say in the matter of employment and disciplinary and administrative control over her. It is also stated by R1 in Counter that petitioner had behaved in a disrespectful manner. Admittedly, no Charge Sheet was issued or enquiry conducted. She does not know English language. She does not know how to frame the sentence mentioned in Annexure-C dated 21.04.2011. Reason for R1 terminating her was firstly, one Stella working with her while was harassed by R1 she interfered. Secondly, petitioner made an issue of sexual harassment to the petitioner. This was not initially pleaded in the Claim Statement hoping that First Respondent and Officers would change for good and provide employment to the petitioner. Petitioner was reinstated on 27.05.2011 and again terminated on 30.05.2011.

She worked on 27th, 28th May and 29th being a Sunday she was stopped from work from 30.05.2011. R1 produced the latter dated 28.05.2011 before this Court for the first time. With the help of Union she has written complaints to the First Respondent about the sexual harassment towards her. Letters dated 20.10.2010 and 16.06.2011 were written about the sexual harassment, but with no action. Copies of complaints were sent to the General Manager, Chairman and Ministry of Defence. Petitioner has completed Para-medical course producing which certificate the employment was obtained. She was given in-house straining in Para-Medical staff given only to the permanent staff of the Hospital. The Certificate dated 28.01.2009 was issued by R1. Her Attendance was written in the Attendance Book and she was asked to sign it countersigned by the Officers of R1. If the Contractor was present there is no need for the counter signature. In the Register of Wages though seal of R2 is affixed, the Register was countersigned by the doctor of the First Respondent and Dy. Labour Commissioner (Central). The Muster Roll was also scrutinized by the ALO (Central). As on 01.12.2009 sanctioned strength of Cordite Factory was 6 in the case of Ward/Sahayak Male and Female and there were four persons working. In the remaining two, the petitioner was employed. Though there was a tender with M/s Alert Security as the successful tenderer, petitioner was employed in the permanent sanctioned post by R1. Petitioner had already been employed even before the advent of Second Respondent. But with no change of employees, with change of Contractor contract system is nothing but a camouflage. Court has to pierce the veil and see the truth. There have only been verbal instructions to continue the old employees as every time the new contract employees cannot be trained to do the work. By the time the training is over the period of contract would expire. There was no contract employee as per Contract Labour Act, 1970. Petitioner is now registered under the Employment Exchange. R1 accepted that the work was supervised only by the officials of R1. Letter dated 13.10.2010 of R1 directing R2 to terminate the services of the petitioner on the ground of misconduct is stigma. Based on the complaint dated 12.10.2010, order dated 13.10.2010 was issued by R1. As many as 20 persons have signed the complaint. But not a single person has been examined. Under the RTI Act reply has been given that joint representation from government servants have to be viewed as subversive of discipline. Petitioner is not aware of any action against the 20 persons who made joint complaint which is false. Before the representation under Right to Information Act, CMO(IC) of Cordite Factory Hospital agreed to take the petitioner under the employment in letter dated 14.01.2011. R1 has mentioned that petitioner was Ward Sahayak. It is M. Thakur, CMO, Incharge of Cordite Factory Hospital, alleged of sexual harassment, who dismissed petitioner from service not once but twice. Though she was offered employment w.e.f. 17.01.2011 after ID was raised, she was made only to stand whole day and informing not to come for work from 18.01.2011. It is strange that Sivsankaran who agreed to provide employment before the Concillation Officer dated 16.05.2011 has stated in the Counter that petitioner is not entitled to any relief. She had also been Casual Visitors Pass. Slowly R1 was improving their documents mentioning the petitioner as contract employee. Attendance and Wage Register would depict her as direct employee. Register also establishes petitioner to have had completed 480 days of continuous service in a period of 24 calendar months under R1 and she is deemed to have attained permanent status. In certain other areas of contact work the contract is cancelled sending out the Contractor and continuing the contract employees directly supervising the work and paying the salary. Action of R1 is arbitrary and illegal by utilizing contract labourers on sanctioned strength in the estimate strength. Petitioner is not regularized to defeat which regularization R1 terminated her services. It is also to escape from complaint of sexual harassment. At the most she can be considered as Casual Labour under R1. Once the termination is held illegal she is entitled to regularization. Her last drawn pay was Rs. 206.80 per day paid monthly by R1, who insisted her signature in the register said to have been maintained by R2.

7. Points for consideration are:

(i) Whether the action of the Management of M/s Alert Security Services, Coimbatore, a Cordite Factory Hospital Management, Aravankadu in terminating the services of Smt. R. Arthi w.e.f. 13.10.2010 without following the provision of Section-25-F Act is justified or not?

(ii) To what relief the concerned workman is entitled?

8. Evidence consists of the oral testimony of WW1 and Ex. W1 to Ex. W14 on the petitioner's side and on the Management's side MW1 was examined and Ex. M1 to Ex. M6 marked. Second Respondent after filing a counter remained consistently absent thereafter and dit not take part in the further proceedings and is set ex-parte.

Points (i) & (ii)

9. Heard both sides. Perused the records, documents, evidence and written arguments on behalf of the First Respondent. Both sides keenly argued in terms of their case in their respective pleadings with reference to cited decisions. The conspicuous arguments on behalf of the petitioner include that the petitioner is seen engaged as a contract worker. She is seen to continue to be engaged even though contractor changes successively. Her engagement is to be understood as contract of service under First Respondent and not contract for service through the Second Respondent. Petitioner was working as Ward Sahayaka. Out of 6 Ward Sahayaks as the sanctioned strength for the post only 4 posts were filled up and two were outsourced. MW1 is seen to admit that Ward Sahayak is a sanctioned post. MW1-Witness for the

Management does not know whether the 2nd Respondent has registered under the CLRA Act. When in the light of a common purported complaint against the petitioner lodged, a misconduct tends to be attributed against her. Ex. M2-Common Complaint, in its nature and form is erratic as it is and it is to be viewed with disfavor in a collective manner, which is subversive of discipline. A direct employee cannot be converted into a contract employee. Petitioner's engagement is against sanctioned post. The nature of her work is continuous. If the post is not a sanctioned one there is no claim for the relief. Concept of backdoor entry is out of the realm of public employment. Petitioner acquired status of permanent employee by having worked more than 480 days within a period of 24 calendar months. The Second Respondent, the so-called Contractor remained ex-parte after filing counter admitting to be registered contractor. But he has not produced license or certificate of registration as required by the provisions after going through various processes commencing with application for license in prescribed form till the obtaining of the same. Correspondent duties of the Principal employer and the Licensed Contractor to maintain prescribed registers in relevant forms are also highlighted. There is no evidence of any temporary registration made or any temporary license obtained. There is also provision for submission of annual return by Principal Employer to Registering Officer who has duty to maintain Register of registered contractors. The Tribunal has the duty to lift the veil to come to know the nature of the employment whether as direct or under the Contractor. If it is not a genuine contract for employment and it is a ruse and a camouflage. The allegation of sexual harassment towards the petitioner has not been denied by the Respondent. No enquiry has been held against the petitioner though allegations of misconduct are discernible against her. She was not charge sheeted either. There is violation of Section-25F of the ID Act when she is actually a casual employee under the First Respondent and while by reason of her having admittedly worked continuously for more than 480 days within a period of 24 calendar months, she is also deemed to have attained permanent status under the Respondent. Her termination from service in violation of Section-25F of ID Act is *void abinitio.* She is entitled to be reinstated into service with all benefits.

10. Prominent arguments on behalf of the First Respondent are that the dispute is between the petitioner and the Contractor Employer, Second Respondent. Petitioner is only contractor's employee. R1 has no role over the engagement of petitioner as contract worker for the work under the First Respondent or for her termination. Due to misbehavior of the petitioner with the staff of Cordite Factory Hospital (CFH), R1 only directed R2 to replace her by deploying her in any other location. Section-25F of the ID Act is applicable only to R2. As held by the Supreme Court in Steel Authority of India Ltd . VS. Union of India and another (2006-12-SCC-233) the employee taking definite stand as contract worker cannot take contradictory and inconsistent plea that he was also workman of the principal employer. The claim is devoid of merits.

11. On a consideration of the rival contentions I am led to the conclusion that the petitioner appointed against a sanctioned post of Ward Sahayaka on contract basis through the Second Respondent Contractor. It is borne out by records and evidence that there have been some unpleasant situations in relation to the petitioner with a Medical Officer. Though there has emanated a common complaint against the petitioner regarding the undesirability of continuing her for the services in the hospital, such a petition from its nature and content and having regard to the signatories to them does not sound genuine and may have been made use of as a cover to send out her from her engagement as Ward Sahayaka. The crucial question is whether she has been a contract employee under the Second Respondent or a direct employee under the First Respondent. In order to prove that she is under a valid conrtact for service between the Second Respondent and First Respondent there has not been any tangible evidence. Admittedly, her debut to the service in the CF Hospital under the Cordite Factory initially was not through the Second Respondent who claims himself to be a registered contractor which is only a plea without proof. It is pertinent to note that pleading *perse* is not proof. The different legal requirements and formalities for the creation and continuance of service as a Contractor, do not stand proved to have been complied with. Evidently she was given various training by the Cordite Factory Management for equipping herself to discharge the functions she is put on with her by way of her engagement in the CF Hospital. It is nobody' case that for her engagement through the previous Contractors they had valid license or contract with the First Respondent for the due engagement of contract employee in a valid contract for service. While in the case of previous contractors there is no case that they had obtained valid license for the purpose, the case of the Second Respondent is that he has obtained valid licenses but that is not substantiated. Mere *ipse dixit* is not enough to establish such a vital aspect. If the petitioner was a contract employee it is not for the Management to impart her training or other practices, coaching, which should have been the duty and function of the Contractor himself whose duty is only to provide supply of labour. As to the nature of the contract of service also there is no evidence. When with presence of some intermediary contractor she gains her access, yet it may appear to be a contract employment to her and accordingly she may hold out herself to be so, then again there is nothing to divest her status as a direct employee while the contract is still a ruse and a camouflage. The petitioner, therefore, is apt to be a direct employee. When engagement of the petitioner supervenes to be against sanctioned post of Ward Sahayaka, her continuance as such for longer years, here more than 3

years, the situation relegates to the realm of unfair labour practice being practiced upon her by the First Respondent Management in continuing her as *badlies*. In such a context, the decision in Uma Devi's case has no application. Back door entry has no relevance in the areas of public appointment. It is to be noted that she came in as Ward Sahayak, a sanctioned post, in which, she, when continues to be engaged there for more than 3 years, it is only apt to draw the deeming provision of her having acquired permanent status. When under a common complaint discernibly she is being terminated from service it is stigmatic and the same is not in compliance with Section-25F of the ID Act. So much so, while there need not be any hesitation to hold that she is apt to be a direct employee under the First Respondent and found so in having terminated her from service without compliance of Section-25F of the ID Act, the same amounts to retrenchment which is *void abinitio*. Therefore she is entitled to be reinstated into service forthwith with continuity of service and all attendant benefits including full back wages. Ordered accordingly.

12. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd February, 2013)

A.N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Smt. R. Arthi

For the 2nd Party/Management : MW1, Sri N.N. Narendra

Documents Marked:

From the Petitiner's side

Ex. No.	Date	Description
Ex.W1	13.10.2010	Dismissal order of the petitioner
Ex.W2	20.01.2009	Para Medical Staff Training Certificate
Ex.W3	20.10.2010	Petitioner's Representation
Ex.W4	16.02.2008	First Aid Certificate approved by Ministry of Health
Ex.W5	08.04.2011	Petitioner's Representation to 1st and 2nd Respondent and ALC (C)
Ex.W6	18.01.2007	OFD letter pertaining out-sourcing of deficit sanction strength
Ex.W7	01.12.2007	Sanction and existing strength of CFA
Ex.W8	01.12.2009	Sanction and existing strength of CFA
Ex.W9	08.07.2008	Tender Notice pertaining to filling up of Sanction Strength (Ward Sahayaka)
Ex.W10	14.05.2011	Work Order (Ward Sahayaka)
Ex.W11	19.01.2011	Representation under RTI
Ex.W12	24.02.2011	Reply to the representation under RTI by 1st Respondent admitting their mistakes
Ex.W13	08.12.2010	ID Act-Conciliation proceeding Notice by ALC(C)
Ex.W14	14.01.2011	Reinstatement of the order to the petitioner by CFA Management
Ex.W15	16.05.2011	Conciliation proceedings of ALC (C) Portraying agreement by CFA Management for reinstatement
Ex.W16	27.05.2011	Pass (Permission for work as Ward Sahayaka) Pertaining to reinstatement endorsed by CFA Management
Ex.W17	30.05.2011	Petitioner's representation for Status Quo
Ex. W18	02.06.2011	Postal A/D endorsed by CFA Management
Ex. W19	22.07.2011	Muster-Roll for the month of May 2011 showing that petitioner had worked on 27th and 28th of May 2011 endorsed by CFA ma
Ex. W20	22.07.2011	Wage-Roll for the month of May 2011 showing that petitioner had worked on 27th and 28th of May 2011 endorsed by CFA Management
Ex.W21	17.12.2010	Circular issued by CFA Management petaining to Minimum Wage of Rs. 206.80 to the petitioner
Ex.W22	10.05.2010	Circular issued by CFA Management pertaining to Minimum Wage
Ex.W23	09.05.2008	Letter from DoPT regarding regularization
Ex.W24	07.10.2009	Ordnance Factory Board's letter pertaining Parliamentary assurance of Contract Labourers
Ex.W25	04.02.2010	Ordnance Factory Board's letter pertaining Regularization
Ex.W26	06.04.2010	Ordnance Factory Board's letter pertaining (Parliamentary Committee) regarding Contract Labourers

Ex.W27	30.08.2010	Ordnance Factory Board's letter pertaining to the continuity of Contract Labourers
Ex.W28	04.08.2010	Letter by the (CFA Management) 1st Respondent showing the actual responsibility, welfare and supervising of Contract Labourers
ExW29	23.04.2012	Transfer Order of Dr. Thakur CMO/ CFH
Ex.W30	10.06.2011	Complaint against Dr. Thakur CMO/CFH regarding sexual harassments by petitioner with evidence
Ex.W31	13.08.2011	Defence Minister's letter regarding action against Dr. Thakur CMO/ CFA regarding sexual harassments
Ex.W32	17.11.2011	Ministry of Defence' s letter to the petitioner regarding her representation to the PM, DARPAG (Public Grievance), Ministry of Health
Ex.W33	16.11.2011	Ministry of Defence's/OFB Cell letter regarding action against sexual harassment
Ex.W34	28.09.2011	Ministry of Defence's OFB Cell letter regarding action against sexual harassment
Ex.W35	26.11.2011	Representation by petitioner to Ministry of Defence/Defence Secretary
Ex.W36	—	A/D Endorsed by OFB & CF Management
Ex.W37	29.01.2003	Ordnance Factory Board's letter pertaining responsibility of 1st Respondent regarding Contract Labourers
Ex.W38	11.08.2009	Reply to RTI by 1st Respondent regarding period of service of the petitioner
Ex.W39	12.01.2010	OFB Board's letter pertaining responsibility of 1st Respondent regarding Contract Labourers
Ex.W40	—	Copy of Attendance (more than 24 calendar months) register showing from 16.02.2008 to 09.09.2010 worked by petitioner, maintained by 1st Respondent (Total 32 months)
Ex.W41	—	Copy of day-wise attendance, countersigned by the 1st Respondent from 1st April 2010 to 9th October, 2010 (Totally 7 months) which also portrays that the petitioner was under the control of the 1st Respondent
Ex.W42	—	Copy of Wage Roll of the petitioner, endorsed by 1st Respondent
Ex.W43	12.08.2009	Copy of EPF Receipt of the petitioner endorsed by the 1st Respondent
Ex.W44	13.07.2011	Dy. Chief Labour Commissioner (C)'s letter regarding regularization of the petitioner
Ex.W45	17.06.2011	Ministry of Labour and Employment's letter regarding regularization of the petitioner
Ex.W46	28.05.2011	Representation by petitioner regarding Permanency
Ex. W47	28.05.2011	Representation by petitioner regarding Permanency to the 1st Respondent
Ex. W48	04.06.2011	Postal A/D endorsed by the 1st Respondent

From the Management side:

Ex. No.	Date	Description
Ex. M1	26.05.2010	Closing of Service Contract of M/s Arokiadas Simon
Ex. M2	12.10.2010	Request for replacement of the petitioner by staff of C.F. Hospital
Ex. M3	13.10.2010	Request for replacement by the 1st Respondent
Ex. M4	21.04.2011	Request for reinstatement into service by the petitioner to the 2nd Respondent
Ex. M5	28.05.2011	Request to replace the petitioner by the 1st Respondent
Ex. M6	31.05.2011	2nd Respondent request to the petitioner.

नई दिल्ली , 15 मार्च, 2013

का॰आ॰ 863.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण भुवनेश्वर के पंचाट (संदर्भ संख्या 79/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-03-2013 प्राप्त हुआ था।

[सं॰ एल/12012/119/2008-आईआर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th March, 2013

S.O. 863.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 79/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of *State Bank of India* and their workmen, received by the Central Government on 15/03/2013.

[No. L-12012/119/2008-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present: Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 79/2008

Date of Passing Award—1st March, 2013

Between : The Asstt. General Manager,
State Bank of India,
Bapujinagar Branch,
Distt. Khurda, Orissa,
Bhubaneswar, (Orissa)

1st Party-Management

(And)

Their workman Sri Birabar Behera,
Qr. No. VR-5/1, Kharvela Nagar, Unit-3,
Bhubaneswar (ORISSA)

2nd Party-Workman.

Appearances : Shri Alok Das,
For the 1st Party-Management
Authorized Representative
None
For the 2nd Party-Workman.

AWARD

The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India and their workman under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Letter No. L-12012/119/2008 — IR(B-I), dated 13.10.2008 to this Tribunal for adjudication to the following effect:

> "Whether the action of the management of State Bank of India, Bhubaneswar Main Branch in terminating services of Sri Birabar Behera w.e.f. 30.09.2004 is fair, legal and justified? To what relief is the workman concerned entitled"?

2. The 2nd Party-Workman has filed his statement of claim alleging that he had joined his services as a Messenger on 01.09.1983 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days' work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days' work in each year he was not regularized, instead terminated and refused employment from 30.9.2004 by the 1st Party-Management without any written communication or payment of compensation. The lst Party-Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He therefore brought the matter into the notice of the C.G.M. and C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) vide his letter dated 05.11.2007. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30.9.2004.

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party-workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party-Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central), Bhubaneswar to the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No. 70 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-workman that he had joined the Bank on 01.09.1983 and he was discontinued from service on 30.9.2004 is not correct. He was engaged intermittently on temporary/daily wage basis due to exigencies of work. When his services were no more required he was not engaged further. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman has neither completed several years of continuous service in the Bank nor he has completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity

for permanent absorption to the ex-temporary employees/ daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the Management of the State Bank of India all eligible persons were called for interview. The 2nd Party-workman was also called for interview in the year 1990 and 1993. But he was not found successful hence could not be appointed in the Bank. The Union or the 2nd Party-workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997, filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15.5.1998 passed in O.J.C. No. 2787/1997 dismissed a batch of Writ Petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC - 3082/ 1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Sri Behera had allegedly been terminated in October, 1987 his claim has become stale by raising the dispute after ten years. It is a settled principle of law that delay destroys the right to remedy. Thus the present dispute is liable to be rejected on the above grounds.

4. On the pleadings of the parties following issues were framed:—

ISSUES

1. Whether the action of the Management of State Bank of India, Bhubaneswar Main Branch in terminating services of Shri Birabar Behera with effect from 30.9.2004 is fair, legal and justified?

2. Whether the present reference of the individual workman during the pendency of the I.D. Case No. 7/2007 before this Tribunal on the same issue is legal and justified?

3. Whether the workman has worked for more than 240 days as enumerated in the Industrial Disputes Act?

4. To what relief is the workman concerned entitled?

5. The 2nd Party-workman despite giving sufficient opportunity did not adduce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his Union representative.

6. The 1st Party-Management has adduced the oral evidence of Shri Laxmidhar Mallick as M.W.-1 and filed documents marked as Ext.-A to Ext.-J in refutation of the claim of the 2nd Party-workman.

FINDINGS

ISSUE NO. 1

7. A specific plea has been raised by the 1st Party-Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in I.D. Case No. 7/2007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in I.D. Case No. 7/2007 is given below for comparison with the dispute in the present case—

Whether the action of the Management of State Bank of India, Orissa Circle, Bhubaneswar in not considering the case of 125 workmen whose details are in Annexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workmen are entitled to?

8. The name of the 2nd party-workman appears at Sl. No. 70 in Annexure-A to the above reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party-workman in the present case while in I.D. Case No. 7/2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that the issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st Party Management.

ISSUE NO. 2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he had joined the service on 01.09.1983 and worked till 30.9.2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party- Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year. M.W.-1 Shri Laxmidhar Mallick in his statement before the Court has stated that "The disputant workman was working intermittently for few days in our Branch on daily wage basis in exigencies. ..... He had not completed 240 days of continuous and

uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued from service with effect from 30.9.2004, but has stated that "In fact the workman left working in the Branch since October, 1987.". The 2nd Party-workman has to disprove the evidence led by the 1st Party-Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has no right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination. Thus he is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is hereby decided against the 2nd Party-workman for failing to prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

ISSUE NO. 3

10. Since the 2nd Party-workman could not prove that he had rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage employee. His services can be terminated at any time without assigning any cause by the 1st Party- Management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, Bhubaneswar Main Branch in terminating the services of Shri Birabar Behera with effect from 30.9.2004 his termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

ISSUE NO. 4

11. In view of the findings recorded above under Issues No. 2 and 3, the 2nd Party- workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

Dictated & Corrected by me.

JITENDRA SRIVASTAVA, Presiding officer.

नई दिल्ली, 15 मार्च 2013

का॰आ॰ 864 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू॰ सी॰ एल॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (आईडी संख्या 21/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/03/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/363/1993-आई आर (सी-II]
बीएम पटनायक, डेस्क अधिकारी

New Delhi, the 15th March, 2013

S.O. 864.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 21/2006 of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 15/03/2013.

[No. L-22012/363/1993-IR(C-II]
BM PATNAIK, Desk Officer

ANNUXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

No. CGIT/LC/R/21/06

Presiding Officer: Shri R.B. Patle

General Secretary,
Laljhanda coal Mines Mazdoor Union (CITU),
At & PO Damua,
Distt. Chhindwara (MP) Workman/Union

Versus

The Managing Director,
M/S Western Coalfields Limited,
Civil Lines,
Coal Estate, Nagpur (MS) Management

AWARD

Passed on this 28th day of February 2013

1. As per letter dated 7-7-2006 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No. L-22012/363/1993-IR(C-II) dated 7-7-2006 The dispute under reference relates to:

> "Whether the action of the management of WCL in not considering the application of Smt. Kanta Bai, wife of the deceased workman Late Shri Lahudas for compassionate appointment is legal and justified? If not, to what relief the wife of the deceased workman is entitled to?"

2. After receipt of reference, notices were issued to the parties. Ist party/workman submitted her claim at Page 6/1 to 6/3 of record. The case of the Ist party/workman as per statement of claim is briefly described as under:-

That the deceased Lahudas, husband of Ist party was working as Tub Loader in Damua Colliery since 1975. The deceased Lahudas, husband of Ist party was regular employees of IInd party. On 11-9-87, he sent a leave application under Certificate posting addressed to the Manager, Damua Colliery requesting leave till passing of his transfer order from Damua colliery to Sawner colliery. Late Lahudas was feeling insecurity to his life. He had applied for his transfer to Sawner Colliery with a request to grant leave. On 2-4-88, late Lahudas again requested for extension of leave stating that he was under treatment. He has furnished his address to the Management/ IInd party. He died on 3-6-89. Ist party/workman claiming to be widow of Late Lahudas, employee of IInd party submitted application for employment as dependent on 27-8-90 claiming benefit under NCWA-III & IV. IInd party/ management returned application for employment on the ground that deceased workman was a dismissed employee, as such her claim can not be considered.

3. The Ist party approached ALC, Chhindwara. During conciliation proceeding, Mr. P. Bannerjee, Enquiry Officer appeared and submitted para-wise comments. The Central Govt. declined to refer dispute. The Ist party/workman filed Writ Petition No. 2040/94. As per order dated 18-1-06, Hon'ble High Court directed Central Govt., Ministry of Labour, New Delhi to refer the dispute for adjudication to CGIT. Accordingly the reference has been made. It is further submitted that in Writ petition, IInd party/management has contented that enquiry was conducted against deceased Lahudas, husband of Ist party. When he did not appear in the proceeding, he was proceeded ex-parte. The dismissal order dated 18-10-88 was produced by management before Hon'ble High Court. The Ist party prays that whole proceedings be ordered to be vitiated and reinstate the deceased Lahudas with all benefits. That IInd party be directed to provide employment to Ist party, widow of the deceased workman as per the NCWA.

4. IInd party management filed Written Statement on 25-5-2009 denying claim of the Ist party/workman. It is submitted by IInd party that the dispute is referred for adjudication as per direction given by the Hon'ble High Court. That IInd party has submitted reply before ALC(C) contending that Ist party is not entitled to employment on compassionate ground. The Conciliation Officer submitted report to the appropriate Govt. The appropriate Govt. refused to refer the matter for adjudication for the reasons that Ist party is not covered under provision of Para 9.4.3 of NCWA-IV as her husband expired on 3-6-89 and he was dismissed from service on 12-10-88 and no dispute about his dismissal was raised till then. As per order passed in Writ Petition No. 2040/93, the dispute has been referred. That this Tribunal is required to see whether the claimant is entitled to reinstatement on ground of dismissal of deceased workman. It is contended that denial of employment by IInd party of Ist party is just and proper.

5. In para-3 of Written statement, IInd party submits that deceased Shri Lahudas was a habitual absentee, remained unauthorisedly absent without any intimation, permission or sanctioned leave. He continuously remained absent from 11-9-87. Chargesheet was issued to him on 5-2-88 for misconduct of continuous absent without satisfactory reason. The chargesheet was sent by Registered AD post to his permanent home address mentioned in the colliery record. Workman did not submit his reply, he decided to conduct enquiry against him as per order dated 11-3-88. Shri P. Bannerjee, the then Sr. Personnel Officer was appointed as Enquiry Officer. Its memo was sent to deceased workman on his address. Sitting of enquiry was fixed on 11-4-88, 26-4-88 & 30-5-88. Despite of memos sent to the workman, he remained absent. *Vide* letter dated 3-6-88, workman was informed that in case he is sick, he should report to the company Hospital where treatment is available. The said letter was acknowledged by the workman but he did not care to follow the instructions, neither availed medical facilities. No information was given about his signatures on treatment outside. The Enquiry Officer fixed next dated on 19-6-88 and intimation was sent on the changed address of deceased workman but he did not appeared. Enquiry was fixed on 25-7-88 and intimation was sent to the workman. Acknowledgement of all the intimations of enquiry was filed. The workman did not care to appear and defend case against him. Departmental enquiry was concluded in his absence. Enquiry Officer submitted his report holding the workman guilty of charges. As per order dated 11-10-88, deceased workan was dismissed for his unauthorized absence. That deceased workman Lahudas died after order of dismissal. Therefore dependent is not entitled to employment as per clause 9.4.3 of NCWA. On such grounds, IInd party prays for rejection of claim of Ist party.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of WCL in not considering the application of Smt. Kanta Bai, wife of the deceased workman Late Shri Lahudas for compassionate appointment if legal and justified?	Party in Affirmative
(ii) If not, what relief the workman is entitled to?"	Monetary compensation Rs. 3000 per month is allowed.

REASONS

7. The dispute between Ist and IInd party relates to denial of employment of Ist party as dependent of Late Lahudas. As per NCWA-IV, there is not dispute that the Ist party is widow of Late Lahudas. The claim of Ist party/workman was rejected in the ground that her husband was dismissed from service on 12-10-88 before his death on 3-6-89 and therefore Ist party is not entitled to employment as dependent of deceased workman Lahudas. Ist party submitted affidavit of her evidence pleading all the facts contended in her statement of claim. In her cross-examination, Ist party says her husband was working as loader in Damua colliery No. 22 & 23. He was appointed in 1975 and continued to work till 1987. She was married in 1976, she was residing with her husband in the Mines quarter. That she has no document about service of her Late Husband. In her further cross-examination, she says that sometimes her husband was not going to duty. That her husband has not gone to duty from 11-9-87 to 5-2-88. She claims ignorance whether chargesheet was issued to her husband, she claims ignorance about the Deptt. Enquiry held against him or any registered letter sent to him. She also claims ignorance that her husband was dismissed from service from 12-10-88. Her husband died on 3-6-89. During 87-88, she was not residing in Mines quarter with her husband. That she doesnot know about application submitted to the Manager of Damua Mines. She claims ignorance with the correspondence with her husband. She has no correspondence with Manager of Damua Mines,. She had initiated proceedings after death of her husband for employment on compassionate ground. She was told that as her husband was dismissed, she could not get employment. That her husband was not quarreling with anybody. She was told by her husband that he was threatened. Therefore he was not attending duties. Her husband was trying for his transfer to Sawner Mines.

8. Ist party/workman produced document Exhibit W-1-copy of reply filed before ALC(C) in conciliation proceeding, Exhibit W-2- copy of order in Petition No. 2040/93 & Exhibit W-3- Copy of dismissal order dated 11-10-88. In Exhibit W-1, IInd party had contended before Conciliation Officer that Late Lahudas, husband of 1st party was dismissed after holding enquiry. It was the reason that the dispute between parties was not referred. In Exhibit W-2, Hon'ble High Court in Case No. 2040/93, directed Respondent No.1 i.e. Central Govt. to reconsider matter and pass appropriate order for making reference for adjudication of dispute by the Tribunal. It was also observed that Govt. had refused to refer the dispute on the ground that 1st party/workman is not governed under provisions of Para 9.4.3 of NCWA-IV as her Husband expired on 3-6-89 and he was dismissed from service on 12-10-88. As per direction by Hon'ble High Court, dispute has been referred. However the dispute under reference does not cover legality of dismissal of service. The service of Late Lahudas Husband of 1st party contending that the relevant documents mentioned in Written Statement are not produced. Documents relating to enquiry are not produced.

9. Management submitted evidence on affidavit of Shri R.K. Acharya giving the details that the deceased Lahudas, husband of 1st party was dismissed from service after enquiry. In his cross-examination, management witness says that he was not knowing Late Lahudas. He has no personal knowledge about enquiry held against him. The record of enquiry proceedings is not produced on record. However on the basis of documents Exhibit W-1, W-2, it is clear that Late Lahudas husband of 1st party was dismissed after report of the Enquiry Officer. The copy of dismissal order is also produced alongwith affidavit of management's witness Shri Sandeep Shukla.

10. Learned counsel for 1st party Mr. Verma submitted written notes of arguments. I have carefully gone through it. Reliance is placed by Shri Verma on ratio held in case of Krushnakant B. Parmar Vrs. Union of India and another in 2012(3) Supreme Court Cases 178. Ratio held in the case is for sustaining such allegations it must be proved that unauthorized absence was willful. If absence is due to compelling circumstances under which it is not possible to report for or perform duty, such absence cannot be held to be willful and employee guilty of misconduct. Considering ratio in this case, the dismissal for unauthorised absence is required to be willful. Next reliance is placed by Mr. Verma on ratio held in case of Ananda Chandra Prusty Vrs. Orissa Mining Corporation Ltd,. reported in 1996 I OLR 353. Attention was pointed out to observations in Para No.7 with due respect, I make it clear that the observations relating to burden of proof to establish charge cannot be applied to present case. As the legality of the dismissal of Late Lahudas, husband of 1st party is not referred for adjudication. For same reasons I do not find observation in para-13 relied by learned counsel for 1st party useful for decision. Copy of Judgement in WP No. 9085/2012 Rajesh Kumar Tripathi Vrs. State of MP and others submitted by Mr. Verma. The judgment relates to appointment of Panchayat Karmi has absolutely no bearing to the controversy to the case at hand. Copy of judgment in WP No. 5976/2004 between Kaushalya Bai Vrs. Western Coalfields Ltd. and others is submitted. My attention was pointed out to the reference of NCWA-V and in clauses provided for employment to the dependents of the said case. The copy of NCWA-IV is made available by learned counsel for IInd party Mr. Shashi. Clause 9.3.2 deals with employment to one dependent of worker who died while in service. Para 9.3.3. relating to dependents includes wife, unmarried daughter, son, adopted son. If no such dependents are available, brother, widowed daughter/ widowed daughter-in-law or son in law residing with the deceased and almost wholly dependent on the earnings of

the deceased may be considered to be the dependant of the deceased. 1st party being widow is covered under clause 9.3.3 as dependent of the deceased. The deceased Lahudas died on 3-6-89 as per document

Exhibit W-1, W-2 husband of Ist party terminated on 12-10-88 prior to his death. As per pleadings and evidence of the management, exparte enquiry was conducted and termination order was also issued. The IInd party has not producted any document that the termination or dismissal order of husband of Ist party was served on him before his death and as such the order of dismissal was given effect. As per document W-1, Ist time in conciliation proceeding before ALC, Chhindwara, IInd party had contended about dismissal of the husband of Ist party holding enquiry. The subsequent course is not in dispute that on the said ground, the reference was rejected and in WP filed by Ist party, directions were given to the Central Govt. and dispute is referred for adjudication.

11. Learned counsel for IInd party Mr. Shashindharan submits that legality of the order of dismissal on the enquiry held against husband of Ist party is not referred therefore this Tribunal has no jurisdiction to deal with those aspects. On above point, learned counsel relies on ratio held in Pottery Mazoor Panchayat Vrs. Perfect Pottery Company and another reported in AIR 1979 Supreme Court Cases 1356. The Lordship of the Apex Court held, the jurisdiction of Tribunal in Industrial Dispute is limited to the points specifically referred for its adjudication and to matters incidental thereto and the Tribunal cannot go beyond the terms of reference. It is clear from ratio held in the case that incidental matters related to the terms of reference can be decided by the Tribunal. The claim of Ist party/workman was rejected on the ground that her husband was dismissed holding enquiry and therefore she was not entitled to employment under NCWA-IV. The said order has been set aside with the direction to pass appropriate order. The dispute is referred, even if entire contention of IInd party is accepted that the husband of Ist party was dismissed from service perior to his death, it is clear that the order of his dismissal was not served on him. Thus the dismissal order was not given effect. The dependents were not knowing about the said order till reply filed before ALC(C), Chhindwara. That clause 9.5 of NCWA-II provides in case of death/total permanent disablement and medical unfitness under clause 9.4.0 if the female dependent is below the age of 45 years she will have the option either to accept the monetary compensation of Rs. 3000/- per month or employment. In case the female dependent is above 45 years of age, she will been entitled only to monetary compensation and not to employment. From above clause of NCWA it is clear that Ist party being widow of deceased Lahudas, she is entitled to monetary compensation of Rs. 3000/- per month as the Ist party/workman had shown the age in her affidavit of evidence as 50 years.

12. Learned counsel for IInd party relies on ratio held in case of bank of Maharashtra Vrs, Manoj Kumar Deharia reported in 2010(3) M.P.L.J. Pg-213. The Lordship of Jabalpur High Court dealing with compassionate appointment held consideration and evaluation are required to be made in accordance with the existing policies and not on the basis of a policy or scheme which has become extinct. In para 8 of the judgment, Lordship held that inspite of death of bread-earner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the constitution.

13. Considering the evidence on record, it is clear that before death of Late Lahudas, order of his dismissal was not served on him. Ist party was not knowing about the dismissal order. The order of dismissal of Late Lahudas was only on the record of the IInd party. The technicalities needs to be avoided, liberal approach needs to be adopted as Ist party is widow and dependent of Late Lahudas. The order of his dismissal was not served till she filed proceeding before ALC, Chhindwara for employment on compassionate ground. As per para 9.5.0 of NCWA she is entitled to monetary compensation Rs. 3000/- per month. The rejection of her claim by IInd party therefore is not just and legal. Accordingly I record my finding on Point No. 1.

14. Point No.12-The Ist party/workman being widow of Late Lahudas who was in employment as Loader with IInd party, she is entitled to monetary benefit of Rs. 3000/- per month as per clause 9.5.0 of NCWA/IV. Accordingly I record my finding on Point No. 2.

15. In the result, I pass following award:—

i. Action of the IInd party/management rejecting application of Ist party/workman for employment as per NCWA-IV is not just and legal.

ii. IInd party is directed to pay monetary compensation of Rs. 3000/- per month to Ist party as per clause 9.5.0 of NCWA-IV from the date of judgment.

R.B. Patle, Presiding Officer

नई दिल्ली, 15 मार्च, 2013

का॰आ॰ 865 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **एफ॰सी॰आई॰** के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (आईडी संख्या 311/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.03.2013 को प्राप्त हुआ था।

[सं॰ एल-22012/293/2003-आई आर (सी एम-II)]
बी॰एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 15th March, 2013

S.O. 865.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No 311/2003 of the Central Government Industrial-Tribunal-cum Labour Court., Nagpur as shown in the Annexure, in the Industrial dispute between the management of Food Corporation of India, Food Corporation of India, and their workman, received by the Central Government on 15.03.2013.

[No. L-22012/293/2003-IR (CM-II)]
B.M. Patnaik, Desh Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

CASE No. CGIT/NGP/311/2003 Date 07.03.2013.

Party No. 1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur, Nagapur-440 015.

Party No. 1(b) : The Senior Regional Manager,
Food Croporation of India,
Mistry Bhawan, Dinshaw Wacha
Road, Churchgatye,
Mumbai-400 020.

Versus

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 7th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Mitaram Raghunat Meshram, for adjudication, as per letter No.L-22012/293/2003-IR (CM-II) dated 08.12.20003, with the following schedule:

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Mitaram Raghunat Meshram, Security Guard w.e.f.14.3.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Mitaram Raghunat Meshram ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("PartyNo.1" in short) filed their statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 23.12.1992 and he was initially engaged through a contractor at Gondia Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1992, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Conract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged

by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefit under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 23.12.1992 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regulation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party no. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/ 99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for the therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operated as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party no. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

5. In his cross-examination, the workman has admitted that in his statement of claim he has mentioned that his

initial appointment was through a contractor and he has not filed any document to show that he was appointed by the FCI directly as a Security Guard he has not filed any written termination order. The workman has further admitted that he has not filed any document to show that he had received his salary from F.C.I. and the signature appearing against the name on the letter issued by the Industrial Security and Fire Services, Bombay dated 17.12.1996 is his signature. The workman has further admitted that they had made a complaint to the Labour Officer, Nagpur as the contractor did not pay their salary and with the intervention of the Asstt. Labour Commissioner, Nagpur, the contractor paid him a sum of Rs. 2,192.85 he signed on the revenue stamp in token of receipt of the same amount and Exhibit M-II is a copy of the said receipt.

6. One Shri Mohan Govindrao Temburne has been examined as a witness on behalf of the Party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, this witness has admitted the suggestions that contract for supply of security guards was given to Singh Security Services for two years and subsequently, the contract of Singh Security was extended till 15.12.1996 and contract for supply of security guards was given to M/s. Chaitanya Security and Investigation Services, Amaravati from January, 1992 to May, 1992 and to M/s. Security Services Intelligence Bureau, Thane from 01.06.1992 to 31.03.1993 and to M/s Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by FCI. The witness has also admitted that inspite of change of contractors, workman worked continuously in FCI from 23.12.1992 to 14.03.1999. This witness has also admitted the suggestion that on 14.03.1999, the contract of M/s. Industrial Security and Fire Services was expired. In his cross-examination, this witness has further admitted that the concerned officers of the FCI were issuing necessary directions to the workman and other security guards regarding the place and time of their performing duties and the security guards posted at the gate of the Depot of FCI were keeping accounts in a register regarding the number of incoming and out-going vehicles to and from the depot respectively and home guards and police persosnnel of the state were engaged for watch and ward purpose of the depot, after the disengagement of the workman and other security guards and the work of watch and ward is a continuous process in the FCI and the same is of perennial in nature. This witness has further stated that the contractors engaged by FCI were paying the wages to the security guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 23.12.1992 at Gondia depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice or one month' wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the Union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he was never a contract labour and such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 29.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 20.05.2008 directed the Party No. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statement Ltd. & Anr. Vs. Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some otheres as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No.1 and the

Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages form 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was employee of the Party No. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of U.P.) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O. General Forest Division, Sheopur).

It was also submitted by the Union representative for the workman that Party No. 1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and such, the concerned contractor is necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the worman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the party No. 1 and the workman and the Party No. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the party No. 1 that the Party No. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No. 1 as per the rules of appointment and no evidence has been adduced by the worman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* MD Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman along with 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition,it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have became workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgement that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgement of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union water front workers and [others reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition

involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.

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In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of statement of the claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1992, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance in placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs* M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs*. National Union Water Front Workers and others).

In the decision reproted in 1994-II CLR-402 (Supra) the Hon'ble Apex Court have held that:—

2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs of contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulaiton and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2(1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in conenction with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of Section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have

regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under Section 16, Section 17, Section 18, or Section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-Section (4) of Section 21, If the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor of the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the Central Government or the State Government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This Court in the case of Gammon India limited *Vs*. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

> "The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by the Section 10 of the Act."

In the Case of B.H.E.L. Workers' Association *Vs*. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under Section 10 of the Act. It is not for the court to enquire into the quesiton and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *Vs*. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *Vs*. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer

and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under Section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the Central Government or by any appropriate Government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen as has been urged in this case, is a question of fact is to be establishment by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter whcih has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (Supra) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling foodgrain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not neccessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do.....", 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a " workman" within the definition of the term as contained in the Act.
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> Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957-I-LLJ-477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

In the decision reported in 2001 LAB IC-3656 (Supra) Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Court or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out

the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW 430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/-12-8-1999 (Cal): C.O. No. 6545 (W) if 1996, D/-9-5-1997(Cal): W.A. Nos. 345-354 of 1997 m D/-17-4-1998 (Kant): W.P. No. 4050 of 1999, D/- 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/--23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No. 1 for Non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No. 1 have produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the Non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-examination that contract for supply of security guards was given by Party No. 1 to different contractors from 01.03.1989 till 14.03.1999.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. in this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or

occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the service by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman is a necessary party in the reference, The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman, Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 15 मार्च, 2013

का॰आ॰ 866 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ॰ सी॰ आई॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर** के पंचाट (**आईडी संख्या 313/2003**) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/03/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/295/2003-आई आर (सी एम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 15th March, 2013

S.O. 866.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 313/2003 of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of Food Corporation of India, Food Corporation of India, and their workman, received by the Central Government on 15/03/2013.

[No. L-22012/295/2003-IR(CM-II]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No. CGIT/NGP/313/2003

Date:07.03.2013.

Party No.1(a) The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur-440015.

Party No. 1(b) The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan Dinshaw Wacha Road,
Churchagatye,
Mumbai—400020.

Versus

Party No. 2 The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 7th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the Management of Food Corporation of India and their workman, Shri Rajesh Nathuji Bagade, for adjudication, as

per letter No.L-22012/295/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Rajesh Nathuji Bagade, Security Guard w.e.f. 14.03.1999 is legal and justified/ If not, to what relief the concerned workman is entitled."

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Rajesh Nathuji Bagade ('the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 01.06.1992 and he was initially engaged through a contractor at Gondia Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security Guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman in that in 1992, he was engaged by the Party No.1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No.1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No.1 and the contractor had no role play in the same and the work performed by him was being assigned to him by Party No.1 and he was a regular employee of Party No.1 and Party No.1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No.1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No.1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notifications on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No.1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No.1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmand and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleased by the workman that his salary was paid by the Party No.1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha, Depot and the Party No.1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No.1 and Party No.1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No.1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 01.06.1992 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman

against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their godowns are filled with foodgrains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No.1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/ 99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No.1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

5. In his cross-examination, the workman has admitted that his original appointment was through contractor and he has not filed any document showing payment of salary to him by the F.C.I..

6. One Shri Mohan Govindrao Temburne has been examined as a witness on behalf of the Party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, this witness has admitted the suggestions that contract for supply of security guards was given to Singh Security services for two years and subsequently, the contract of Singh Security was extended till 15.12.1996 and contract for supply of security guards was given to M/S Chaitanya Security and Investigation Services, Amaravati from January, !992 to May, 1992 and to M/S Security Services Intelligence Bureau, Thane from 01.06.1992 to 31.03. 1993 and to M/S Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by FCI. The witness has also admitted that inspite of change of contractors, the workman worked continuously in FCI from 01.06.1992 to 14.03.1999. This witness has also admitted the suggestion that on 14.03.1999, the contract of M/S Industrial Security and Fire Services was expired. In his cross-examination, this witness has further admitted that the concerned officers of the FCI were issuing necessary directions to the workman and other security guards regarding the place and time of their performing duties and the security guards posted at the gate of the Depot of FCI were keeping accounts in a register. regarding the number of incoming and out- going vehicles to and from the depot respectively and home guards and police personnel of the state were engaged for watch and ward purpose of the depot, after the disengagement of the workman and other security guards and the work of watch and ward is a continuous process in the FCI and the same is of perennial in nature. This witness has further stated that the contractors engaged by FCI were paying the wages to the security guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 01.06.1992 at Gondia depot as a security guard and he worked continuously without any interruption till 14th March,1999 and his services were terminated orally by the Party No.1, without following the due procedure of law and the workman had completed more than 240 days of work in each year

and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No.1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No.1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No.1 and he was never a contract labour and such action of the Party No.1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 29.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No.1 and not a contract labour and after hearing the Parties, the Tribunal by order dated 30.05.2008 directed the Party No.1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No.l.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 ICLR-254 (Statesman Ltd. Anr. Vs. Eight Industrial Tribunal, West Bengal ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No.1 nor the so called contractors engaged by the Party No.1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No.1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No.1 and the party No.1 is the real employer and there was master and servant relationship between the Party No.1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No.1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with party No.1 till 14.03.1999 and the Party No.1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No.1 and it was Party No.1, who terminated the services of the workman without compliance of the mandatory provisions of section 25- F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda Vs. Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. Vs. State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma Vs. D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No.1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No.1 that the workman was never appointed by Party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No.1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No.1 and the workman and the Party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Honble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a

valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No.1 that the party no.1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No.1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No.1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No.1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki Vs. Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore Vs. S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat Vs. Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam Vs. Md. Raffi) and Appeal (Civil) 2969/2004 (Rajsthan State Gangasagar Mills Ltd. Vs. State of Rajasthan).

9. First of all, I will take up the submission made by learned advocate for the Party No.1 that the present. reference is hit by the principles of res-judicata, due to the decision of the Honble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman along with 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Honble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Honble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others Vs. National Union water front workers and others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
>
> * * * * *
>
> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Honble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No.1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1992, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No.1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No.1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the

workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India Vs. M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Honble Apex Court have held that:—

2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through• contract labour or who supplies contract labour for any work of the establishment and includes a sub contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factars. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state

board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited Vs. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

> "The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 I CLR SC 165 = (1985) I SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh Vs. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath Vs. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer, and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the Central Government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling foodgrain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do..... " 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used

in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/-12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the

provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No.1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No.1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party no.1 have produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No.1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No.1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No.1 in his cross-examination that contract for supply of security guards was given by Party No.1 to different contractors from 01.03.1989 till 14.03.1999.

Moreover, for the sake of argument, even if, it is held that the Party No.1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P.CHAND, Presiding Officer

नई दिल्ली, 15 मार्च, 2013

का॰आ॰ 867 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ॰ सी॰ आई॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (आईडी संख्या 284/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/03/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/227/2003-आई आर (सी एम-II)]
बी॰एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 15th March, 2013

S.O. 867.—In pursunace of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 284/2003 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 15/03/2013

[No-L-22012/227/2003-IR(CM-II)
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/284/2003 Date: 07-03-2013.

Party No. 1(a) : The District Manager.
Food Corporation of India,
Ajani, Nagpur ,
Nagpur, 440015.

Party No.1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgatye
Mumbai - 400020.

Versus

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boduha Vihar,
Post: Wardha, Distt, Wardha (M.S.)

AWARD

(Dated: 7th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Arvind Namdeorao Barbudhe, for adjudication, as per letter No. L-22012/227/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

"Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Arvind Namdeorao Barbudhe, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Arvind Namdeorao Barbudhe ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 23.01.1992 and he was initially engaged through a contractor at Gondia Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under Section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security Guards, in violation of the provision of Section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and fullback wages.

The further case of the workman is that is 1992, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contactors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and

the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 23.01.1992 to 14.03.1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under Section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their godowns are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/ 99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No.1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under Section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit the workman has reiterated the facts mentioned in the statement of claim.

5. In his cross-examination, the workman has admitted that his original appointment was through contractor and he has not filed any document showing payment of salary to him by the F.C.I

6. One Shri Mohan Govindrao Temburne has been examined as a witness on behalf of the Party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, this witness has admitted the suggestions that contract for supply of security guards was given to Singh Security services for two years and subsequently, the contract of Singh Security was extended till 15.12.1996 and contract for supply of security guards was given to M/S. Chaitanya Security and Investigation Services, Amaravati from January, 1992 to May, 1992 and to M/S. Security Services Intelligence Bureau, Thane from 01.06.1992 to 31.03. 1993 and to M/S. Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by FCI. The witness has also admitted that inspite of change of contractors, the workman worked continuously in FCI from 23.01.1992 to 14.03.1999. This witness has also admitted the suggestion that on 14.03.1999, the contract of M/S. Industrial Security and Fire Services was expired. In his cross-examination, this witness has further admitted that the concerned officers of the FCI were issuing necessary directions to the workman and other security guards regarding the place and time of their performing duties and the security guards posted at the gate of the Depot of FCI were keeping accounts in a register regarding the number of incoming and outgoing vehicles to and from the depot respectively and home guards and police personnel of the state were engaged for watch and ward purpose of the depot, after the disengagement of the workman and other security guards and the work of watch and ward is a continuous process in the FCI and the same is of perennial in nature. This witness has further stated that the contractors engaged by FCI were paying the wages to the security guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 23.01.1992 at Gondia depot as a security guard and he worked continuously without any interruption till 14th March,1999 and his services were terminated orally by the Party No.1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No.1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No.1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No.1 and he was never a contract labour and such action of the Party No.1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 29.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No.1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No.1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No.1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1 .

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. & Anr. *Vs.* Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No.1 nor the so called contractors engaged by the Party No.1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No.1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No.1 and the party No.1 is the real employer and there was master and servant relationship between the Party No.1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No.1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party

no.1 till 14.03.1999 and the party No.1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of party No.1 and it was party No.1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/ s. Bharat Heavy Electricals Ltd. *Vs*. State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that party No.1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the party No.1 that the workman was never appointed by party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the party No.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of party No.1 complying with the due procedure of termination and there was no relationship of master and servant between the party No.1 and the workman and the party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and party no.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the party No.1 that the party no.1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by party no.1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with party No.1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the party No.1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajsthan State Gangasagar Mills Ltd. *Vs*. State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the party No.1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman along with 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs*. National Union Water Front Workers and others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.

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In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the party No.l.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the party No.1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1992, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the party No.1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and party No.1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs* M/s Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs*. National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (Supra) the Hon'ble Apex Court have held that:—

2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a subcontractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the

contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited *Vs*. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

> "The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act".

In the case of B.H.E.L. Workers' Association *Vs*. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh Vs. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *Vs*. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the

appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labour through a contractor a mere, camouflage and smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (Supra) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do " 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to Pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.
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> Dharangadhara Chemical Works Ltd. *Vs*. State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC - 3656 (Supra) the Hon'ble Apex Court have held that:—

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ -9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/-9-51997 (Cal): W.A. Nos. 345-354 of 1997m D/-17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the party No.1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the party No.1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the party No.1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by party No.1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the party No.1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the party No.1 in his cross-examination that contract for supply of security guards was given by party No.1 to different contractors from 01.03.1989 till 14.03.1999.

Moreover, for the sake of argument, even if, it is held that the party No.1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17.It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. Chand, Presiding Officer

नई दिल्ली, 15 मार्च, 2013

का.आ. 868 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ॰सी॰आई॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (आईडी संख्या 291/2003) के प्रकाशित करती है, जो केन्द्रीय सरकार को 15/03/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/234/2003-आई आर (सी एम-II)]
बी॰एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 15th March, 2013

S.O. 868.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref, 291/2003 of the Cent.Govt.Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the managment of Food Corporation of India their workmen, received by the Central Government on 15/03/2013

[No. L-22012/234/2003 - IR(CM-II)]
B.M. Patnaik, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/291/2003 Date: 07.03.2013.

Party No. 1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur - 440015.

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgatye,
Mumbai - 400020.

Versus

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Budha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 7th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their

workman, Shri Sadik Allauddin Khan for adjudication, as per letter No. L-22012/234/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Sadik Allauddin Khan, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, Smt. Hilima, widow and legal heir of the deceased workman, Shri Sadik Allauddin Khan, who died on 24.01.2003 ('the applicant" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the applicant as presented in the statement of claim is that her deceased husband, Sadik Allauddin Khan (the "workman" in short) was in the employment of Party No. 1 from 22.11.1987 and he was initially engaged through a contractor at Gondia Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security Guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the applicant is that in 1987, the workman was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labour engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia district, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the applicant that the salary of the workman was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages. The applicant has prayed to give all consequential benefits to the legal heir of the workman.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 22.11.1987 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman

against them are not true and there was no question of violation of the provisions of 25(H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their godowns are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The applicant in support of the claim has examined herself as a witness. In his evidence, which is on affidavit, the applicant has reiterated the facts mentioned in the statement of claim.

In her cross-examination, she has stated that her husband was working in F.C.I. but she cannot say who had engaged him.

5. One Shri Mohan Govindrao Temburne has been examined as a witness on behalf of the Party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affadavit. In his cross-examination, this witness has admitted the suggestions that contract for supply of security guards was given to Singh Security services for two years and thereafter the contract was given to the Industrial Security and Fire Services and Sadik Khan was sent by Singh Security Services to work as a Security Guard as per the contract and Sadik Khan was also engaged by Industrial Security and Fire Services as a Security Guard. This witness has also admitted that as per the requirements of F.C.I., Sadik Khan and other Security Guards were being deployed to different places as per the directions of the Depot Manager.

6. At the time of argument, it was submitted by the union representative for the applicant that the workman was engaged by the management of FCI on 22.11.1987 at Gondia depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 26-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he was never a contract labour and such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract

labour system and to give employment to the workman.

It was further submitted by the union representative that on 29.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No. 1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. & Anr. Vs. Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commission as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representatives placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda Vs. Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. Vs. State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma Vs. D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No. 1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

7. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further

Submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No. 1 was exempted the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workamn cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No. 1 that the Party No. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki Vs. Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore

Vs. S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat Vs. Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam Vs. Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. Vs. State of Rajasthan.

8. First of all, I will take up the submission made by the learned advocate for the party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 2389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for the regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. And others Vs. National Union Water Front Workers and others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

9. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1987, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission the workman in the cross-examination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

10. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994- II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India Vs. M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. And others Vs. National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such

employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2(1)(b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2(1)(c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specific in this behalf, and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment." Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourees is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation andf wages another essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contract labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principal employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate Government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking a all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited V. Union of India (1974) I SC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association Vs. Union of India, 1985 I CLR SC 165 = (1985) 1 SSC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the Government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh Vs. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connectiion with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath Vs. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the prinicpal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

11. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling foodgrains at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do.....". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957-I-LLJ-477). Now where a contractor employs a workman to do the work which he contracted

with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

12. In the decision reported in 2001 LAB IC-3656 (supra) the Hon'ble Apex Court have held that:—

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicity provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the prinicple of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.
>
> Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration of the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.
>
> Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/-12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/-17-4-1998 (Kant): W.P.No. 4050 of 1999, D/-2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/-23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.
>
> It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. the word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping the view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

13. So far the contention raised by the union representative regarding drawing of adverse inference against the party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is

admitted by the workman that he was engaged thorugh the contractor in F.C.I. and due his such engagement, it was quite natural for the party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the party No. 1 have produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the dicisions by the Hon'ble Courts, on which reliance has been placed by the union representatives, with respect, I am of the view that the said decisions have no clear application of this case.

14. So far the contention raised by the union representative regarding the non-registration of the party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the party No. 1 in his cross-examination that contract for supply of security guards was given by party No. 1 to different contractors from 01.03.1989 till 14.03.1999.

Moreover, for the sake of argument, even if, it is held that the party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

15. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any documents to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

16. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 15 मार्च, 2013

का.आ. 869 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ॰ सी॰ आई॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध ा में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (आईडी संख्या 287/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/03/2013 को प्राप्त हुआ था।

[सं॰ एल॰-22012/230/2003-आई आर (सी एम-II)]

बी॰एम॰ पटनायक, डेस्क अधिकारी,

New Delhi, the 15th March, 2013

S.O. 869.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 287/2003 of the Cent. govt. Indus. Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 15/03/2013.

[No. L-22012/\230/2003-IR(CM-II)]

B.M. PATNAIK, Desk Officer,

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No. CGIT/NGP/287/2003 Date: 07.03.2013

Party No. 1 (a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur-440015.

Party No. 1 (b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha
Road, Churchgatye,
Mumbai-400020.

Versus

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 7th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Anil Shriram Bhande, for adjudication, as per letter No. L-22012/230/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Anil Shriram Bhande, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Anil Shriram Bhande ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 23.01.1992 and he was initially engaged through a contractor at Gondia Depot of Party No. 1 as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1992, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Secuirty Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the

contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so-called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 23.01.1992 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor is every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claims has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

5. In his cross-examination, the workman has admitted that his original appointment was through contractor and he has not filed any document showing payment of salary to him by the F.C.I.

6. One Shri Mohan Govindrao Temburne has been examined as a witness on behalf of the party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, this witness has admitted the suggestions that contract for supply of security guards was given to Singh Security Services for two years and subsequently, the contract of Singh Security was extended till 15.12.1996 and contract for supply of security guards was given to M/s Chaitanya Security and Investigation Services, Amaravati from January, !992 to May, 1992 and to M/s Security Services Intelligence Bureau, Thane from 01.06.1992 to 31.03.1993 and to M/s Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by FCI. The witness has also admitted that inspite of change of contractors, the workman worked continuously in FCI from 23.01.1992 to 14.03.1999. This witness has also admitted the suggestion that on 14.03.1999, the contract of M/s Industrial Security and Fire Services was expired. In his cross-examination, this witness has further admitted that the concerned officers of the FCI were issuing necessary directions to the workman and other security guards regarding the place and time of their performing duties and the security guards posted at the gate of the Depot of FCI were keeping accounts in a register regarding the number of incoming and out- going vehicles to and from the depot respectively and home guards and police personnel of the state were engaged for watch and ward purpose of the depot, after the disengagement of the workman and other security guards and the work of watch and ward is a continuous process in the FCI and the same is of perennial in nature. This witness has further stated that the contractors engaged by FCI were paying the wages to the security guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 23.01.1992 at Gondia depot as a security guard and he worked continuously without any interruption till 14th March,1999 and his services were terminated orally by the party No.1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by party No.1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the party No.1 had shown the workman as contract labour, but the so-called contract was made on papers and the workman was actually working under the direct control and supervision of the party No.1 and he was never a contract labour and such action of the party No.1 was sham and only a camouflage to deny the legitimate claim of the workman and the so-called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 29.06.2007, an application was filled by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the party No.1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the party No.1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the party No.1 failed to produce the documents and as such, adverse inference is to be drawn against the party No.l.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 ICLR-254 (Statesman Ltd. & Anr. Vs. Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the party No.1 nor the so-called contractors engaged by the party No.1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so-called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the party No.1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the party No.1 and the party No.1 is the real employer and there was master and servant relationship between the party No.1 and the workman and

the so called contract given to the contractor expired on 31.012.1998 and though party No.1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with party No.1 till 14.03.1999 and the party No.1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of party No.1 and it was party No.1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda Vs. Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. Vs. State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma Vs. D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that party No.1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the party No. 1 that the workman was never appointed by party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the party No. 1. and the workman and the party No. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the party No. 1 that the party No. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by party No. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was not question of compliance of Section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the party No. 1 placed reliance on the decisions of the Hon'ble Apex Court in Appeal (Civil) 7038/ 2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/ 2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the party No. 1 that the present reference is hit by the principles of res- judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman along with 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble Court did not consider the main relief and passed

the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> ** ** **
>
> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "the year 1992, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper". The case of the workman is that after every two years, the party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01. 11. 1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs* M/s Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front workers and others).

In the decision reported in 1994-II CLR-402 (Supra) the Hon'ble Apex Court have held that:—

2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been

defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited *V.* Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

> "The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *V.* Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *V.* Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *V.* National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is bene-volently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Flora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-11 LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do.....". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed do to the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.
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> Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principal of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.
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> Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.
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> Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ -12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ -09-5-1997 (Cal): W.A. Nos. 345-354 of 1997m D/ -17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ -2-8-2000 (Bom): and W.P. No. 2616 of 1999, D/ -23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.
>
> It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under".

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the dicisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No. 1 for non-production of ducuments as ordered by the Turibunal on the application of the workman is concerned, it is to be mentioned that it is

admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No. 1 have produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, or which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-examination that contract for supply of security guards was given by Party No. 1 to different contractors from 01.03.1989 till 14.03.1999.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or comouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of workman that he was engaged by the contractor. So the contractor, who had engaged the workman is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 15 मार्च, 2013

का.आ. 870 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **एफ॰सी॰आई॰** क
प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (आईडी संख्या 292/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 15/03/2013 को प्राप्त हुआ था।

(बी॰एम॰ पटनायक) डेस्क अधिकारी
[सं॰ एल-22012/235/2003-आई॰आर॰ (सी एम-**II**)]

New Delhi, the 15th March, 2013

S.O. 870.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award Ref. No. 292/2003 of the Central Government Industrial Tribunal-cum-Labour Court NAGPUR as shown in the Annexure, in the Industrial dispute between the management of Food Corporation of

India, and their workmen, received by the Central Government on *15/03/2013*

[No. L-22012/235/2003-IR(CM-II)]
B.M. PATNAIK, Desk Officer.

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/292/2003 Date: 07.03.2013.

Party No. 1(a) : The District Manager
Food Corporation of India,
Ajani, Nagpur,
Nagpur—440015.

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgate,
Mumbai—400020.

Versus

Party No. 2 : The Secretary,
Rashtriya Mazdoor,sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S)

AWARD
(Dated: 7th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Vijay Domeshwar Faye, for adjudication, as per letter **No. L-22012/235/2003-IR (CM-II) dated 08.12.2003,** with the following schedule:—

"Whether the action of the mangement of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Vijay Domeshwar Faye, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Vijay Domeshwar Faye ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 09.10.1998 and he was initially engaged through a contractor at Gondia Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his service were terminated orally by Party No.1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1998, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and

his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 09.10.1998 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their godowns are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labout system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of secuirty guards by the security contractor and they has no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the worman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

5. In his cross-examination, the workman has admitted that his original appointment was through contractor and he has not filed any document showing payment of salary to him by the F.C.I.

6. One Shri Mohan Govindrao Temburne has been examined as a witness on behalf of the Party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, this witness has admitted the suggestion that the workman, Vijay Faye was engaged by the contractor as a Security Guard for some days, after the

death of Keshav D. Faye.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 09.10.1998 at Gondia depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is pernnial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No.1 had shown the worman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he was never a contract labour and such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genunine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 29.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the party no. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.5.2008 directed the Party No. 1 to produce the doucuments, but inspite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesmen Ltd. & Anr. Vs. Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No. 1 and the workman and the so called contract given to the contractor expired on 31.012.1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions, reported in 1994 II CLR-402 (R.K. Panda Vs. Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. Vs. State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma Vs. D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No. 1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No.1 that the workman was never appointed by Party No.1 and he has engaged by the contractor is a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No.1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules,

for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No. 1 that the Party No. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No. 1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgement that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the Judgement of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Uniion water front workers and others (reported in 2001 (7) SCC1), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1998, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards

working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-IILLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs.* M/s Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

> 2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.
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> 3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefor, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him

to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of courses if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited *V.* Union of Inida (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *V.* Union of India, 1985 I CLR SC 165=(1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *V.* Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *V.* National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the

contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling foodgrain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do .....". 'The expression' employed has at least two known connotiations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957-I-LLJ-477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC-3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ - 9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. Nos. 4050 of 1999, D/ - 2-8 2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12 1999 (Born) 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No.1 for nonproduction of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No.1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No.1 have produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non- production of the documents by Party No.1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No.1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No.1 in his cross-examination that contract for supply of security guards was given by Party No.1 to different contractors from 01.03.1989 till 14.03.1999.

Moreover, for the sake of argument, even if, it is held that the Party No.1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the

provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of , employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman.

Hence, it is ordered:-

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 15 मार्च, 2013

का.आ. 871 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **एफसीआई** के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकारण नागपुर** के पंचाट (**आईडी संख्या 294/2003**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **15/03/2013** को प्राप्त हुआ था।

सं॰ एल-22012/237/2003-आई आर (सी एम-II)
बी॰एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 15th March, 2013

S.O. 871.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 294/2003 for the *Cent. Govt. Indus. Tribunal-cum-Labour Court, NAGPUR* as shown in Annexure, in the industrial dispute between the management of *Food Corporation of India, Food Corporation of India,* and their workmen, received by the Central Government on 15/03/2013

[No. L-22012/237/2003-IR (CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/294/2003 Dated: 07.03.2013

Party No. 1(a) : The District Manager
Food Corporation of India,
Ajani, Nagpur,
Nagpur—440015.

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgatye,
Mumbai—400020.

Versus

Party No. 2 : The Secretary,
Rashtriya Mazdoor, Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S)

AWARD

(Dated: 7th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Pramod Haribhau Panche, for adjudication,

as per letter No.L-22012/237/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

"Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Pramod Haribhau Panche, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Pramod Haribhau Panche ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 01.06.1992 and he was initially engaged through a contractor at Gondia Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1992, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 01.06.1992 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so, the allegations made by the workman agasist them are not true and there was no question of

violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when .their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No.1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/ 99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No.1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under Section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on Affidavit, the workman has reiterated the facts mentioned in the statement of claim.

5. In his cross-examination, the workman has admitted that his original appointment was through contractor and he has not filed any document showing payment of salary to him by the F.C.I.

6. One Shri Mohan Govindrao Temburne has been examined as a witness on behalf of the Party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, this witness has admitted the suggestions that contract for supply of security guards was given to Singh Security services for two years and subsequently, the contract of Singh Security was extended till 15.12.1996 and contract for supply of security guards was given to M/S. ,Chaitanya Security and Investigation Services, Amaravati from January, 1992 to May, 1992 and to M/S Security Services Intelligence Bureau, Thane from 01.06.1992 to 31.03. 1993 and to M/S Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by FCI. The witness has also admitted that inspite of change of contractors, the workman worked continuously in FCI from 01.06.1992 to 14.03.1999. This witness has also admitted the suggestion that on 14.03.1999, the contract of M/S Industrial Security and Fire Services was expired. In his cross-examination, this witness has further admitted that the concerned officers of the FCI were issuing necessary directions to the workman and other security guards regarding the place and time of their performing duties and the security guards posted at the gate of the Depot of FCI were keeping accounts in a register regarding the number of incoming and out-going vehicles to and from the depot respectively and home guards and police personnel of the state were engaged for watch and ward purpose of the depot, after the disengagement of the workman and other security guards and the work of watch and ward is a continuous process in the FCI and the same is of perennial in nature. This witness has further stated that the contractors engaged by FCI were paying the wages to the security guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 01.06.1992 at Gondia depot as a security guard and he worked continuously without any interruption till 14th March,1999 and his services were terminated orally by the Party No.1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and

after termination of the services of the workman, fresh hands were engaged by Party No.1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No.1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No.1 and he was never a contract labour and such action of the Party No.1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 29.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No.1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No.1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No.1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No.1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 ICLR-254 (Statesman Ltd. & Anr. Vs. Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No.1 nor the so called contractors engaged by the Party No.1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No.1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No.1 and the Party No.1 is the real employer and there was master and servant relationship between the Party No.1 and the workman and the so called contract given to the contractor expired on 31.012.1998 and though Party No. 1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No.1, who terminated the services of the workman without compliance of the mandatory provisions of section 25F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs*. Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs*. State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No. 1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with countinuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No. 1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home Guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates

as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No. 1 that the Party No. 1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No. 1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No.1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No.1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajsthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

"In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union water front workers and others (reported in 2001 (7) SCC1), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.

** ** ** **

In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1992, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No.1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs* M/s Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs*. National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

> 2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.
>
> 3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative

of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by

itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-11 LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling foodgrain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do..... " 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10 (1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial

dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/ camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Over ruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ -9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Born) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Born), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No.1 have produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-examination that contract for supply of security guards was given by Party No. 1 to different contractors from 01.03.1989 till 14.03.1999.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 had engaged the workman and other as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, दिनांक 15 मार्च, 2013

का.आ. 872.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ॰ सी॰ आई॰ के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (आईडी संख्या 305/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/03/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/282/2003-आई आर (सी एम-II)]
बी॰एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 15th March, 2013

S.O. 872.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 305/2003 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, Food Corporation of India, and their workmen, received by the Central Government on 15/03/2013

[No. L-22012/282/2003 - IR (CM-II)]
B.M. Patnaik, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/305/2003 Date: 07.03.2013.

Party No. 1(a) : The District Manager
Food Corporation of India,
Ajani, Nagpur,
Nagpur—440015.

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgatye,
Mumbai—400020.

Versus

Party No. 2 : The Secretary,
Rashtriya Mazdoor,Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S)

AWARD

(Dated: 7th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Vijay Haridas Borkar, for adjudication, as

per letter No.L-22012/282/2003- IR (CM-II) dated 08.12.2003, with the following schedule:-

"Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Vijay Haridas Borkar, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Vijay Haridas Borkar ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 01.01.1992 and he was initially engaged through a contractor at Gondia Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1, and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1992, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 01.01.1992 to14.03. 1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of

violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their godowns are filled with foodgrains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No.1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/ 99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No.1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contract given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether, the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit the workman has reiterated the facts mentioned in the statement of claim.

5. In his cross-examination, the workman has admitted that his original appointment was through contractor and he has not filed any document showing payment of salary to him by the F.C.I.. An amount of Rs. 1550.85 was paid to him in presence of Labour Enforcement Officer and others and they were sent by Industrial Security and Fire Services to the Asstt. Manager, F.C.I., Gondia branch, after taking of their signatures against their names as per Exhibit M-V and Exhibit M-VI is his application having his photograph and signature to Singh Security Services for employment.

6. One Shri Mohan Govindrao Temburne has been examined as a witness on behalf of the Party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, this witness has admitted the suggestions that contract for supply of security guards was given to Singh Security services for two years and subsequently, the contract of Singh Security was extended till 15.12.1996 and contract for supply of security guards was given to M/s Chaitanya Security and Investigation Services, Amaravati from January, !992 to May, 1992 and to M/s Security Services Intelligence Bureau, Thane from 01.06.1992 to 31.03. 1993 and to M/s Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by FCI. The witness has also admitted that inspite of change of contractors, the workman worked continuously in FCI from 01.01.1992 to 14.03.1999. This witness has also admitted the suggestion on 14.03.1999, the contract of M/s Industrial Security and Fire Services was expired. In his cross-examination, this witness has further admitted that the concerned officers of the FCI were issuing necessary directions to the workman and other security guards regarding the place and time of their performing duties and the security guards posted at the gate of the Depot of FCI were keeping accounts in a register regarding the number of incoming and out- going vehicles to and from the depot respectively and home guards and police personnel of the state were engaged for watch and ward purpose of the depot, after the disengagement of the workman and other security guards and the work of watch and ward is a continuous process in the FCI and the same is of perennial in nature. This witness has further stated that the contractors engaged by FCI were paying the wages to the security guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 01.01.1992 at Gondia depot as a security guard and he worked continuously without any interruption till 14th March,1999 and his services were terminated orally by the Party No.1,

without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No.1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No.1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No.1 and he was never a contract labour and such action of the Party No.1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 29.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No.1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No.1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No.1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 ICLR-254 (Statesman Ltd. & Anr. Vs. Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No.1 nor the so called contractors engaged by the Party No.1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No.1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No.1 and the Party No.1 is the real employer and there was master and servant relationship between the Party No.1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No.1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No.1 till 14.03.1999 and the Party No.1 paid the wages from 01.01.1999 to 14.03.1999 to the workman, and such facts also prove that the workman was the employee of Party No.1 and it was Party No.1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. Vs. State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma Vs. D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No.1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No.1 that the workman was never appointed by Party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No.1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No.1 and the workman and the Party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble

High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No.1 that the Party No.1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No.1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No.1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No.1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs*. Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs*. S. Mani), Appeal (Civil)-6511of 2005 (Surendranagar District Panchayat *Vs*. Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs*. Md. Raffi) and Appeal (Civil) 2969/2004 (Rajsthan State Gangasagar Mills Ltd. *Vs*. State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No.1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman along with 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs*. National Union Water Front Workers and others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> ** ** ** **
>
> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No.1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No.1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1992, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No.1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No.1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs.* M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs*. National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (Supra) the Hon'ble Apex Court have held that:—

> 2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.
>
> 3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any, establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make

payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited *Vs*. Union of India (1974) I SCC 596, pointed out the object scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *VS*. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath VS. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of

time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (Supra) the Hon'ble Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling foodgrain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do..... " 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs*. State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC - 3656 (Supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10 (1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10 (1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10 (1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the

contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/ camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ -9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-121999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10 (1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No.1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No.1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No.1 have produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non- production of the documents by Party No.1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No.1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No.1 in his cross-examination that contract for supply of security guards was given by Party No.1 to different contractors from 01.03.1989 till 14.03.1999.

Moreover, for the sake of argument, even if, it is held that the Party No.1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings

owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P.CHAND, Presiding Officer

नई दिल्ली, 15 मार्च, 2013

का.आ. 873 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ॰सी॰आई॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (**आईडी संख्या 309/2003**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **15/03/2013** को प्राप्त हुआ था।

[सं॰ एल 22012/291/2003-आईआर (सीएम-II)]

बी॰एम॰ पटनायक, डेस्क अधिकारी

New Delhi the 15th March, 2013

S.O. 873.—In pursuance of Section 17 of the Industiral disputes Act, 1947 (14 of 1947), the Central Government hereby published the Award Ref. 309/2003 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in Annexure, in the industrial dispute between the management of Food Corporation of India, Food Corporation of India, and the their workmen, received by the Central Government on 15/03/2013.

[No. L-22012/291/2003-IR (CM-II)]
B.M. PATNAIK Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/309/2003 Date: 07.03.2013.

Party No. 1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur—440015.

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgate,
Mumbai—400020.

Versus

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S)

AWARD
(Dated: 7th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Pravin Shridharrao Bhayde, for adjudication, as per letter No.-L22012/291/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

"Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the

services of Shri Pravin Shridharrao Bhayde , Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Pravin Shridharrao Bhayde ('the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 23.1.1992 and he was initially engaged through a contractor at Gondia Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1992; he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily ,attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 23.1.1992 to 14.03. 1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial

in nature and as and when their godowns are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No.1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said W.P. and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No.1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under Section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, •they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

5. In his cross-examination, the workman has admitted that he has not filed any appointment order or any document to show the date from which he was working under the management. The workman has admitted that his original appointment was through contractor and he was appointed through the contractor, "Chaitanya Security" and he had applied to "Chaitanya Security" for services and he worked under the management as directed by "Chaitanya Security" and he has not filed any document showing payment of salary to him by the F.C.I.. The workman has also admitted that the contractor was used to be changed after every two years and they approached the ALC and ALC directed the F.C.I. to pay them and therefore F.C.I. paid them.

6. One Shri Mohan Govindrao Temburne has been examined as a witness on behalf of the Party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, this witness has admitted the suggestions that contract for supply of security guards was given to Singh Security services for two years and subsequently, the contract of Singh Security was extended till 15.12.1996 and contract for supply of security guards was given to M/s Chaitanya Security and Investigation Services, Amaravati from January, 1992 to May, 1992 and to M/s Security Services Intelligence Bureau, Thane from 01.06.1992 to 31.03. 1993 and to M/s Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by F.C.I. The witness has also admitted that inspite of change of contractors, the workman worked continuously in F.C.I. from 23.01.1992 to 14.03.1999. This witness has also admitted the suggestion that on 14.03.1999, the contract of M/s Industrial Security and Fire Services was expired. In his cross-examination, this witness has further admitted that the concerned officers of the F.C.I. were issuing necessary directions to the workman and other security guards regarding the place and time of their performing duties and the security guards posted at the gate of the Depot of F.C.I. were keeping accounts in a register regarding the number of in-coming and outgoing vehicles to and from the depot respectively and home guards and police personnel of the state were engaged for watch and ward purpose of the depot, after the disengagement of the workman and other security guards and the work of watch and ward is a continuous process in the F.C.I. and the same is of perennial in nature. This witness has further stated that the contractors engaged by F.C.I. were paying the wages to the security guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of F.C.I. on 23.01.1992 at Gondia depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No.1, without following the due procedure of law and the workman had completed more than 240 days of work in each year

and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under Section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of Section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No.1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No.1 and he was never a contract labour and such action of the Party No.1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of F.C.I. was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 29.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No.1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No.1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No.1 failed to produce the documents and as such, adverse inference is to be drawn against the the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 ICLR-254 (Statesman Ltd. and Anr. Vs. Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No.1 nor the so called contractors engaged by the Party No.1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No.1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No.1 that from the, date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No.1 and the Party No.1 is the real employer and there was master and servant relationship between the Party No.1 and the workman and the so called contract given to the contractor expired on 31.012.1998 and though Party No.1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No.1 till 14.03.1999 and the Party No.1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No.1 and it was Party No.1, who terminated the services of the workman without compliance of the mandatory provisions of Section 25-F of the Act. In support of the submissions the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda Vs. Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. Vs. State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma Vs. D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No.1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No.1 that the workman was never appointed by Party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No.1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No.1 and the workman and the Party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home Guards and Police personnel were appointed as security guards and Party No.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by he learned advocate for the Party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held

that the termination of the workman by the contractor was a valid one and the action of F.C.I. was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No.1 that the Party No.1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No.1, as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No.1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of Section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No.1 placed reliance on the decisions of the Hon'ble Apex Court in Appeal (Civil) 7038/ 2002 (M/s. Essen Deinki Vs. Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore Vs. S Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat Vs. Dayachai Amar Singh), Appeal (Civil) 3639/ 2006 (Krishna Bhagaya Jala Nigam Vs. Md. Raffi) and Appeal (Civil) 2969/2004 (Rajsthan State Gangasagar Mills Ltd. Vs. State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No.1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman along with 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others Vs. National Union water front workers and others (reported in 2001(7) SCC1), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No.1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No.1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1992, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No.1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in F.C.I. and directed to give employment to contract labours engaged by the management and Party No.1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor

and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India Vs M/s Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

> 2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.
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> 3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a subcontractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make

payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That• has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the

employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling foodgrain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the• corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do ....." 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the

contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/ camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ - 9-5-1997(Cal): W.A. Nos. 345-354 of 1997, D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999 D/ - 2-8- 2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12- 1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No.1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No.1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No.1 have produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No.1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No.1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No.1 in his cross-examination that contract for supply of security guards was given by Party No.1 to different contractors from 01.03.1989 till 14.03.1999.

Moreover, for the sake of argument, even if, it is held that the Party No.1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in

sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid,wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract• labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the, workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 15 मार्च, 2013

का.आ. 874 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ॰सी॰आई॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (आईडीसंख्या 308/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/03/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/290/2003-आई आर (सी एम-II)]
बी॰एम॰ पटनायक, डेस्क अधिकारी

New Delhi, 15th March, 2013

S.O. 874.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 308/2003 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 15/03/2013.

[(No. L -22012/290/2003-IR (CM-II)]
B.M. PATNAIK , Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/308/2003 Date: 07.03.2013.

Party No. 1(a) : The District Manager
Food Corporation of India,
Ajani, Nagpur,
Nagpur—440015.

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgate,
Mumbai—400020.

VERSUS

Party No. 2 : The Secretary,
Rashtriya Mazdoor,sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S)

AWARD

(Dated: 7th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Rajesh Bhaidas Borkar, for adjudication, as per letter No.L-22012/290/2003- IR (CM-II) dated 08.12.2003, with the following schedule:—

"Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Rajesh Bhaidas Borkar, Security Guard w.e.f.

14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Rajesh Bhaidas Borkar ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 01.01.1992 and he was initially engaged through a contractor at Gondia Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1992, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 01.01.1992 to14.03. 1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the

work of security is not perennial in nature and as and when their godowns are filled with foodgrains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personal as security guards.

The further case of Party No.1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/ 99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as *res-judicata* and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No.1 is that the appropriate Government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

5. In his cross-examination, the workman has admitted that his original appointment was through contractor and he has not filed any document showing payment of salary to him by the F.C.I..

6. One Shri Mohan Govindrao Temburne has been examined as a witness on behalf of the Party No.1. This witness has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, this witness has admitted the suggestions that contract for supply of security guards was given to Singh Security services for two years and subsequently, the contract of Singh Security was extended till 15.12.1996 and contract for supply of security guards was given to M/s. Chaitanya Security and Investigation Services, Amaravati from January, !992 to May, 1992 and to M/s. Security Services Intelligence Bureau, Thane from 01.06.1992 to 31.03.1993 and to M/s. Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by FCI. The witness has also admitted that inspite of change of contractors, the workman worked continuously in FCI from 01.01.1992 to 14.03.1999. This witness has also admitted the suggestion that on 14.03.1999, the contract of M/s. Industrial Security and Fire Services was expired. In his cross-examination, this witness has further admitted that the concerned officers of the FCI were issuing necessary directions to the workman and other security guards regarding the place and time of their performing duties and the security guards posted at the gate of the Depot of FCI were keeping accounts in a register regarding the number of incoming and out- going vehicles to and from the depot respectively and home guards and police personnel of the state were engaged for watch and ward purpose of the depot, after the disengagement of the workman and other security guards and the work of watch and ward is a continuous process in the FCI and the same is of perennial in nature. This witness has further stated that the contractors engaged by FCI were paying the wages to the security guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 01.01.1992 at Gondia depot as a security guard and he worked continuously without any interruption till 14th March,1999 and his services were terminated orally by the Party No.1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No.1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No.1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No.1 and he was never a contract labour and such action of the Party No.1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 29.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No.1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No.1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No.1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No.1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 ICLR-254 (Statesman Ltd. & Anr. *Vs.* Eight Industrial Tribunal, West Bengal & Ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No.1 nor the so called contractors engaged by the Party No.1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No.1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No.1 and the Party No.1 is the real employer and there was master and servant relationship between the Party No.1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No.1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No.1 till 14.03.1999 and the Party No.1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No.1 and it was Party No.1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda Vs. Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. Vs. State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma Vs. D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No.1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No.1 that the workman was never appointed by Party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No.1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No.1 and the workman and the Party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No.1 that the Party No.1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees

and it is clear that the workman was never engaged by Party No.1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No.1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No.1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki Vs. Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore Vs. S. Mani), Appeal (Civil) 6511 of 2005 (Surendranagar District Panchayat Vs. Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam Vs. Md. Raffi) and Appeal (Civil) 2969/2004 (Rajsthan State Gangasagar Mills Ltd. Vs. State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No.1 that the present refecence is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others Vs. National Union Water front Workers and others [reported in 2001(7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> ** ** ** **
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the Appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the party No.l.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. I as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1992, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No.1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No.1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The Workman of the Food Corporation of India

Vs M/s Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:-

> 2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.
>
> 3. The "Contract Labour" has been defined in Section 2(1)(b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.
>
> 4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For

achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between

the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling foodgrain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do.....". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra [1957 (I) LLJ 477]. Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC 3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/ camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract

labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996 D/-9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8.- 2000 (Born) and W.P. No. 2616 of 1999, D/ - 23-12- 1999 (Born), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No.1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No.1 have produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No.1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No.1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No.1 in his cross-examination that contract for supply of security guards was given by Party No.1 to different contractors from 01.03.1989 till 14.03.1999.

Moreover, for the sake of argument, even if, it is held that the Party No.1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was

not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits thereunder. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 15 मार्च, 2013

का॰आ॰ 875 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू॰सी॰एल॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (आईडी संख्या 104/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/03/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/172/2007-आई आर (सी एम-II)]
बी॰एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 15th March, 2013

S.O. 875.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref.104/08 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL, and their workmen, received by the Central Government on 15/03/2013.

[No. L-22012/172/2007-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/104/08

Presiding Officer: SHRI R.B. PATLE

The Organisation Secretary (Legal),
Rashtriya Koyla Khadan Mazdoor Sangh (INTUC),
Regional Office, Chandametta,
PO Chandametta,
Chhindwara Union/Workman

Versus

The Chief General Manager,
WCL, Pench Area,
PO Parasia,
Chhindwara Management

AWARD

Passed on this 27th day of February, 2013

1. As per letter dated 6-10-08 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-22012/172/2007-IR (CM-II). The dispute under reference relates to:

   "Whether the action of the management of M/S WCL in not considering the additional qualification acquired by Shri Shankar Lal Sahu for promotion to the post of Technical & Sup. Gr.A-I is legal and justified? To what relief is the workman concerned entitled?"

2. After receiving reference, notices were issued to the parties. 1st party/workman has not submitted his statement of claim and as such proceeded exparte against workman.

3. Management filed its Written Statement denying claim of the applicant. It is submitted that claim of 1st party/workman for promotion on the basis of additional qualification is not tenable. As per NCWA, promotions are given as per Cadre Scheme. The

qualifications required for different posts are stated. The Seniority list of overman of the grade was displayed on 8-12-2004. The promotions of Technical Supervisor Group A are provided with Para 12.6.0 of NCWA-VI. That DPC was constituted on 30-3-05. 20 employees promoted considering policy of reservation and the marks secured by them. That applicant is not entitled to the promotion claimed by him. IInd party/management prayed for rejection of reference.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of M/S WCL in not considering the additional qualification acquired by Shri Shankar Lal Sahu for promotion to the post of Technical & Sup. Gr.A-I is just and legal?	In Negative
(ii) If not, what relief the workman is entitled to?"	The claim of 1st party/ workman is rejected.

REASONS

5. Though 1st party/workman is claiming promotion on the ground of additional qualification acquired by him, he has not submitted his Statement of claim neither he adduced evidence. 1st party/workman is proceeded exparte. He had failed to produce evidence. Management has filed affidavit of its witness Shri Uday Kumar Mehta denying the relief claimed by the applicant submitting details of the promotions provided under NCWA Cadre Scheme. The evidence of management's witness remained unchallenged, therefore I record my finding on the Point No.1 in Negative.

6. In the result, I pass the following order—

1. 1st party/workman has not established the denial of promotion by IInd party is illegal.

2. Claim of 1st party/workman for promotion is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 15 मार्च, 2013

का.आ. 876 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रसार भारती के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं॰ 2, चण्डीगढ़ के पंचाट (आईडी संख्या 1289/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/03/2013 को प्राप्त हुआ था।

[सं॰ एल-42012/171/2005-आई आर (सी एम-II)]
बी॰एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 15th March, 2013

S.O. 876.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 1289/2006 of the Cent. Govt-Indus. Tribunal-cum-Labour Court No 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Prasar Bharati, Broadcasting Corporation of India, and their workmen, received by the Central Government on 15/03/2013.

[No. L-42012/171/2005-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri A.K. Rastogi, Presiding Officer.

Case No. I. D. No.1289/2006

Registered on 30.11.2006

Sh. Nikka Ram, So. Sh. Chaudhary Ram, R/o Village Badog, PO Jobri, Tehsil Arki, Solan (HP).

Petitioner

Versus

The Director, Prasar Bharati, Broadcasting Corporation of India, Doordarshan Kendra, Shimla (HP).

Respondents

Appearances

For the workman Sh. Sumit Raj Sharma Advocate.

For the Management Sh. K.K. Thakur Advocate.

AWARD

Passed on 22nd February, 2013

Central Government vide Notification No. L-42012/171/2005 [IR(CM-II)] Dated 30.10.2006, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following

Industrial dispute for adjudication to this Tribunal:—

> "Whether the action of the management of Doordarshan Kendra, Shimla, in terminating the services of Sh. Nikka Ram, w.e.f. January, 2003 is legal and justified? If not, to what relief is the workman entitled?"

The claimants case for the purpose of the dispute under. reference is that he had been engaged by OP for working on assignment basis for 10 days in a month in camera section as Lighting Assistant w.e.f. July 2000 up to October 2000 at a fixed wage of Rs. 330/- per day but from November 2000 he was paid only Rs. 220/- per day till June 2003 when his services were illegally terminated. He had completed 240 days of continuous service in every calendar year preceding the year of his illegal retrenchment. He has alleged the violation of Section 25F, 25G and 25H of the Act. Besides it, he has raised the plea of short payment, non-payment for overtime and non-payment of travelling allowance. He has prayed for his reinstatment with full back wages and continuous service and also for regularization. But the present reference is about the legality and justification of his termination and about the relief, if any, to which he is found entitled hence other issues raised in the claim statement are beyond the scope of reference.

Respondent filed written statement to contest the case. It has been pleaded that this Tribunal has no jurisdiction with regard to the dispute as it was within the jurisdiction of Central Administrative Tribunal and the workman along with others had filed OA No.243-HP-2003 before the Central Administrative Tribunal, Chandigarh which had been dismissed by the Tribunal on 17.11.2004. The workman is therefore estopped also from filing this claim petition before this Tribunal. It was also pleaded that no retrenchment compensation as provided under Section 25F of the Act was payable to the workman and there is no violation of Section 25G and 25H of the Act. He is not entitled to regularization. On merits it has been pleaded that the workman had been engaged as casual worker by the Doordarshan Kendra Shimla on assignment basis on contract for a period not exceeding 10 days in a month at the approved rates as stipulated in the contract. His services were utilized for the purpose for which he had been engaged and necessary payment as per the terms of the contract was made to him for each and every assignment rendered by him. He was never booked for more than 10 days in a month in any calendar year and it is not correct to say that he has worked for more than 240 days in a calendar year. His engagement was discontinued by Doordarshan Kendra, Shimla because there was not sufficient work in Camera Section necessitating booking of casual hands as news coverage being done by stringers. The availability of advanced digital cameras which could be handled by one person independently and does not require the help of Helper/Lighting Assistant for which the workman had been engaged. It was also pleaded that the functioning of the Kendra is maintained with the regular staff employed by the organization and the need to engage casual artists in any category arises only in case there is any appreciable increase in the workload pertaining to production or telecast of programes and the same cannot be handled by the regular staff. The artists engaged on casual basis automatically get disengaged after expiry of the period of contract and no formal, written or oral communication is required.

The workman filed a replication to say that he had been engaged as casual worker and had not been appointed against any regular post governed by the rules of amendment. Hence, the reference is maintainable before this Tribunal. There is no estopple on the workman on account of the order of the Hon'ble Central Administrative Tribunal. Rest of the replica is the reiteration of the claim statement.

Vide order dated 14.10.2011 the case was ordered to proceed ex parte against respondents. Earlier the management had failed to file the reply to the application of the workman for producing documents and nor had produced summoned documents.

In evidence workman examined himself and affidavit of O.G.D. Sharma, Station Direction had been filed on' behalf of management.

I have heard the learned counsel for the workman and perused the evidence on record. As per statement dated 19.1.2012 of the learned counsel for the workman the workman is not insisting on his reinstatement and regularization and is pressing his claim for back wages only.

The workman has alleged the violation of Section 25F, 25G and 25H of the Act. He is entitled to back wages only when the termination of his service is found illegal. As per his own admission his engagement was on assignment basis for 10 days in a month. Though he had pleaded that the respondent used to assign work to him for whole of the month against the assignment order, but it is not acceptable. In the claim statement he has referred Key Entry Register and In and Out Register as a proof of his engagement for the entire month. But merely on the basis of entry and exit in the premises it cannot be accepted that the person concerned had visited the premises in connection of his engagement. Regarding payment also the workman says that he has been paid for 10 days in a month only. Therefore it cannot be accepted that throughout his period of engagement from July 2000 to June 2003 he worked for whole month on payment of 10 days wages only. Obviously he had been working with the respondents for 10 days in a month and could not complete in any case 240 days service in 12 calendar months preceding to the date of his termination. He is therefore not entitled to the protection of Section 25F of the Act. He was

not entitled to any retrenchment compensation, notice or notice pay. The termination of his services cannot be said to be illegal and unjustified on account of violation of Section 25F of the Act.

The workman has pleaded the retention of his juniors at the time of termination of his services and has alleged the violation of Section 25G of the Act. But in his statement he has stated about the re-engagement of the juniors and he has named the alleged junior workman. Obviously his statement does not substantiate his plea that juniors were retained at the time of his termination. Obviously he has failed to prove the violation of Section 25G of the Act.

Section 25H of the Act is about the right of re-employment. The entitlement of workman to right to re-employment or the violation of Section 25H of the Act is not subject matter of the reference.

From the above going discussion it is clear that there is no illegality or unjustification in the termination of the services of the workman hence, he is not entitled to back wages. Reinstatement and regularization has not been pressed by the learned counsel for the workman, but otherwise also the workman is not entitled to reinstatement or regularization also. Reference is accordingly answered against the workman. Let two copies of the Award be sent to the Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer,

नई दिल्ली, 15 मार्च, 2013

का.आ. 877 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ॰ सी॰ आई॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (आईडी संख्या 295/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 15/03/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/238/2003-आई॰आर॰(सी॰एम॰-II)]
बी॰एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 15 March, 2013

S.O. 877.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref 295/2003 of the Central Government Industrial Tribunal-cum-Labour Court Nagpur as shown in the Annexure, in the Industrial dispute between the management of Food Corporation of India, Food Corporation of India, and their workman, received by the Central Government on 15/03/2013.

[No. L-22012/238/2003-IR(CM-II)]
B.M. Patnaik, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/295/2003 Date: 07.03.2013.

Party No. 1(a) : The District Manager
Food Corporation of India,
Ajani, Nagpur,
Nagpur—440015.

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgate,
Mumbai—400020.

Versus

Party No. 2 : The Secretary,
Rashtriya Mazdoor,sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S)

AWARD
(Dated: 7th March, 2013)

In exercise of the powers conferred by clause (d) of subsection (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Sunil Vitthal Raut, for adjudication, as per letter No.L-22012/238/2003- IR (CM-II) dated 08.12.2003, with the following schedule:

"Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Sunil Vitthal Raut, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to' file their respective statement of claim and written statement and accordingly, the workman, Shri Sunil Vitthal Raut (the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 01.01.1994 and he was initially engaged through a contractor at Gondia Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following

the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1994, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI,' Wardha Depot and the Party No. I was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the. contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 01.01.1994 to 14.03.1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No.1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/ 99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No.1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, lathi, whistle and uniform etc to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

5. In his cross-examination, the workman has admitted that his original appointment was through contractor and he has not filed any document showing payment of salary to him by the F.C.I.

6. One Shri Mohan Govindrao Temburne has been examined as a witness on behalf of the Party No.l. This witness has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, this witness has admitted the suggestions that contract for supply of security guards was given to Singh Security services for two years and subsequently, the contract of Singh Security was extended till 15.12.1996 and contract for supply of security guards was given to M/s Chaitanya Security and Investigation Services, Amaravati from January, !992 to May, 1992 and to M/s Security Services Intelligence Bureau, Thane from 01.06.1992 to 31.03. 1993 and to M/s Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by FCI. The witness has also admitted that inspite of change of contractors, the workman worked continuously in FCI from 01.01.1994 to 14.03.1999. This witness has also admitted the suggestion that on 14.03.1999, the contract of M/S Industrial Security and Fire Services was expired. In his cross-examination, this witness has further admitted that the concerned officers of the FCI were issuing necessary directions to the workman and other security guards regarding the place and time of their performing duties and the security guards posted at the gate of the Depot of FCI were keeping accounts in a register regarding the number of incoming and out- going vehicles to and from the depot respectively and home guards and police personnel of the state were engaged for watch and ward purpose of the depot, after the disengagement of the workman and other security guards and the work of watch and ward is a continuous process in the FCI and the same is of perennial in nature. This witness has further stated that the contractors engaged by FCI were paying the wages to the security guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 01.01.1994 at Gondia depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No.1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No.1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No.1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the

direct control and supervision of the Party No.1 and he was never a contract labour and such action of the Party No.1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 29.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No.1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No.1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No.1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. 86 Anr. *Vs.* Eight Industrial Tribunal, West Bengal & ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No.1 nor the so called contractors engaged by the Party No.1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No.1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No.1 and the Party No.1 is the real employer and there was master and servant relationship between the Party No.1 and the workman and the so called contract given to the contractor expired on 31.012.1998 and though Party No.1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No.1 till 14.03.1999 and the Party No.1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No.1 and it was Party No.1, who terminated the services of the workman without compliance of the mandatory provisions of section 25- F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of U.P.) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No.1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No.1 that the workman was never appointed by Party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No.1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No.1 and the workman and the Party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No.1 that the Party No.1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No.1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No.1 in the preceding

12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No.1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal (Civil) 7038/2002 (M/s. Essen Deinki *Vs.* Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs.* S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs.* Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs.* Md. Raffi) and Appeal (Civil) 2969/2004 (Rajsthan State Gangasagar Mills Ltd. *Vs.* State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No.1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Honble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Honble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union water front workers and others (reported in 2001(7) SCC1), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No.1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1994, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No.1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No.1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs.* M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

> 2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.
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> 3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.
>
> 4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers

or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited *V.* Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *V.* Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh *V.* Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *V.* National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the

Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

"Briefly stated, when corporation engaged a contractor for handling foodgrain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do....." 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. *Vs.* State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act• and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/ camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the

age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No 6545(W) if 1996, D/-9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8- 2000 (Born) and W.P. No. 2616 of 1999, D/ - 23-12- 1999 (Born), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of cantract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Honble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No.1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No.1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No.1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non- production of the documents by Party No.1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No.1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No.1 in his cross-examination that contract for supply of security guards was given by Party No.1 to different contractors from 01.03.1989 till 14.03.1999.

Moreover, for the sake of argument, even if, it is held that the Party No.1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on

record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P.CHAND, Presiding Officer

नई दिल्ली, 15 मार्च, 2013

का॰आ॰ 878.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ॰ सी॰ आई॰ के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (आईडी संख्या 312/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 15/03/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/294/2003-आई॰आर॰(सी॰एम॰-II)]
बी॰एम॰ पटनायक, डेस्क अधिकारी

New Delhi, Dated: 15/03/2013

S.O. 878.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref 312/2003 of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial dispute between the management of Food Corporation of India, Food Corporation of India, and their workman, received by the Central Government on 15/03/2013.

[No. L-22012/294/2003-IR(CM-II)]
B.M. PATNAIK, Desh Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/312/2003 Date: 07.03.2013

Party No. 1(a) : The, District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur -440015.

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road,
Churchgatye,
Mumbai - 400020.

Versus

Party No.2 : The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 7th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Jitendra Dhyaneswhar Choudhari, for adjudication, as per letter No.-L22012/294/2003-1R (CM-II) dated 08.12.2003, with the following schedule:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Jitendra Dhyaneswhar Choudhari, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Jitendra Dhyaneswhar Choudhari (the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 01.06.1992 and he was initially engaged through a contractor at Gondia Depot of Party No. 1, as a

Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1992, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 01.06.1992 to14.03. 1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by tile Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No.1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/ 99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of

the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No.1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

5. In his cross-examination, the workman has admitted that his original appointment was through contractor and he has not filed any document showing payment of salary to him by the FCI.

6. One Shri Mohan Govindrao Temburne has been examined as a witness on behalf of the Party No. 1. This witness has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, this witness has admitted the suggestions that contract for supply of security guards was given to Singh Security services for two years and subsequently, the contract of Singh Security was extended till 15.12.1996 and contract for supply of security guards was given to M/s. Chaitanya Security and Investigation Services, Amaravati from January, 1992 to May, 1992 and to M/s. Security Services Intelligence Bureau, Thane from 01.06.1992 to 31.03. 1993 and to M/s. Industrial Security and Fire Services from 16.12.1996 to 15.12.1998 by FCI. The witness has also admitted that inspite of change of contractors, the workman worked continuously in FCI from 01.06.1992 to 14.03.1999. This witness has also admitted the suggestion that on 14.03.1999, the contract of M/s. Industrial Security and Fire Services was expired. In his cross-examination, this witness has further admitted that the concerned officers of the FCI were issuing necessary directions to the workman and other security guards regarding the place and time of their performing duties and the security guards posted at the gate of the Depot of FCI were keeping accounts in a register regarding the number of incoming and out- going vehicles to and from the depot respectively and home guards and police personnel of the state were engaged for watch and ward purpose of the depot, after the disengagement of the workman and other security guards and the work of watch and ward is a continuous process in the FCI and the same is of perennial in nature. This witness has further stated that the contractors engaged by FCI were paying the wages to the security guards deployed by them.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 01.06.1992 at Gondia depot as a security guard and he worked continuously without any interruption till 14th March,1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No.1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No.1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No.1 and he was never a contract labour and such action of the Party No.1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of

contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 29.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No.1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No.1 to produce the documents, but inspite of the order passed by the Tribunal for production of documents, the Party No.1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. 86 Anr. *Vs.* Eight Industrial Tribunal, West Bengal and ors.) and 2004 (103) FLR-187 (Municipal Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No.1 nor the so called contractors engaged by the Party No.1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban on engagement of contract labourers, the Party No.1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No. 1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No.1 and the Party No.1 is the real employer and there was master and servant relationship between the Party No.1 and the workman and the so called contract given to the contractor expired on 31.012.1998 and though Party No.1 unilaterally extended the contract, the contractor did not accept the same and without any contractor, the workman continued the work with Party No.1 till 14.03.1999 and the Party No.1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No.1 and it was Party No.1, who terminated the services of the workman without compliance of the mandatory provisions of section 25-F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda *Vs.* Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. *Vs.* State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma *Vs.* D.F.O., General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No.1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by Party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No.1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No.1 and the workman and the Party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as *res-judicata* between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No.1 that the Party No.1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No.1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No.1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such contentions, the learned advocates for the Party No.1 placed reliance on the decisions of the Hon'ble Apex Court reported in Appeal

(Civil) 7038/2002 (M/s. Essen Deinki *Vs*. Rajiv Kumar), Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore *Vs*. S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat *Vs*. Dayachai Amar Singh), Appeal (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam *Vs*. Md. Raffi) and Appeal (Civil) 2969/2004 (Rajsthan State Gangasagar Mills Ltd. *Vs*. State of Rajasthan).

9. First of all, I will take up the submission made by the learned advocate for the Party No.1 that the present reference is hit by the principles of *res-judicata*, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others *Vs*. National Union water front workers and others (reported in 2001 (7) SCC1), the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> ** ** ** **
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of *res-judicata*. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No.1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1992, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No.1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No.1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs* M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs*. National Union Water Front Workers and others).

In the decision reported in 1994-II CLR-402 (Supra) the Hon'ble Apex Court have held that:—

> 2. With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the

employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain' establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf, and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principal employer he is entitled to deduct the same from the bill of the contractor. The act also conceives that all appropriate Government may after

consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the Act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under Section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer, and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate Government, under Section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-11 LLOJ-4 (supra) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling foodgrain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do..... ". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.
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> Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957 - I - LLJ - 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon'ble Apex Court have held that:—

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.
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> Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/ camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Ovgrruled prospectively. M.A.T. Nos. 1704 and 17b 1999, D/-12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/-9-5-1997(Cal): W.A. Nos. 345-354 of 1997, D/-17-4-1998 (Kant): W.P. No. 4050 of 1999, D/-2-8- 2000 (Bom) and W.P. No. 2616 of 1999, D/-23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Honble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the party No.1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No.1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No.1 have produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No.1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No.1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No.1 in his cross-examination that contract for supply of security guards was given by Party No.1 to different contractors from 01.03.1989 till 14.03.1999.

Moreover, for the sake of argument, even if, it is held that the Party No.1 had engaged the workman and other as contract labourers in violation of the provisions of Contract Labour (Regulations and Abolition) Act, 1976, then• the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No. 1 was not a mere use or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the

contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 15 मार्च, 2013

का॰आ॰ 879.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस॰ ई॰ सी॰ एल॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (आईडी संख्या 165/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/03/2013 को प्राप्त हुआ था।

[सं॰ एल-22012/282/2002-आई॰आर॰(सी॰एम॰-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, Dated: 15/03/2013

Notification

S.O 879.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 165/03 of the Central Government Industrial Tribunal-cum- Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the management of Chirimiri Area of SECL and their workman, received by the Central Government on 15/03/2013.

[No. L-22012/282/2002-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/165/03

Presiding Officer: SHRI R.B. PATLE

The Secretary,
Bhartiya Khadan Mazdoor Sangh MP,
M/72, Bartunga Colony,
P O Chirimiri,
Distt. Korea,
Chhattisgarh Workman/Union

Versus

The Chief General Manager,
Chirimiri Area of South Eastern Coalfields Ltd.,
P O Chirimiri, Distt. Korea,
Korea Chhattisgarh Management

AWARD

Passed on this 1st day of March, 2013

1. As per letter dated 13-10-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section - 10 of I.D. Act, 1947 as per Notification No. L-22012/282/2002-IR(CM-II). The dispute under reference relates to:

"Whether the action of the management of South Easten Coalifields Limited, Chirimiri Area in not promoting Shri Ravindra Tiwari as Electrician Grade-IV *w.e.f.* 2-6-1989 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving the reference, notices were issued to the parties. Ist party/workman submitted Statement of Claim at Page 6/1 to 6/4. The case of Ist party/workman as per statement of claim is that he was appointed as Category-I Mazdoor from 9-7-82. He was promoted as Electrician Helper Cat-II *w.e.f.* 1-1-1987 *vide* order dated 31.12.1986 on recommendation of the Departmental Promotion Committee. As per management's circular dated 7-4-89, stipulated criteria for promotion on the post of Electrician Category-IV. As per the said circular, workman whose academic qualification is Matriculation with ITI having one year experience as Category-1 and 2 years experience as category-II will be eligible for promotion as Electrician Category-IV provided the obtains LT Permit under Indian Electricity Rules for mines in respect of employees in Excavation Cadre.

3. It is submitted that 1st party-Ravindra Tiwari fulfilled the criteria for promotion to the post of Electrician Category-IV. The DPC took place from time to time, recommended his name for promotion to the post of electrician Grade IV *w.e.f.* 1-5-89. His name was deleted in order dated 29-5-89. The Junior employees Shri Seonarayan Yadav and Shri Sajan Prasad Patel were promoted. Ist party/workman was not promoted with them.

4. Ist party further submits that he was promoted to the post of Electrician Grade-IV *w.e.f.* 1-1-92 as per order dated 13-4-92 instead from 1-5-89. His seniority has not been maintained at per with promotees as per order dated 19-5-89. That on representation, he was given notional seniority in Grade-V from 21-10-95 without back wages as per order dated 12-4-99. It is contended by the Ist party that he is discriminated because of Union activities, he is denied promotion to Electrician Grade-IV from 1-5-89. He prays for the said promotion.

5. IInd party/management submitted Written Statement at page 8/1 to 8/4. It is contended that the Ist party is granted promotion of Electrician Grade-IV from 1-1-92. The reference is not tenable. The dispute involved was raised by the Union. It was settled by granting notional seniority in Category-V. Once the dispute has been settled, the same issue cannot be raised again on the same cause of action. The earlier dispute was raised by Bhartiya Khadan Mazdoor Sangh. The said Union is not in existence.

6. IInd party/management submits that Ist party/ workman was appointed in Category-I as par order dated 11-8-92. He was promoted to the post of Electrical Helper Category-II *vide* order dated 31.12.1986. that the Cadre Scheme stipulates eligibility norms and promotion is granted subject to availability of posts. Simply qualifying the eligibility norms cannot be treated as a basis or right for promotion unless and until the post is vacant as per sanctioned manpower budget. In the DPC held in 1989 recommended the case of Shri Ravindra Tiwari was typographical mistake. The promotion order dated 2-6-89 was therefore corrected. His name was erased. That Ist party/workman was promoted to the post of Electrician Cat.-IV *w.e.f.* 1-1-1992 and promoted to the post of Electrician Cat.-V *w.e.f.* 1-7-1998. The workman was given notional seniority in Cat.-V from 21-10-95. It is submitted the reference in dispute is not tenable. All other allegations of Ist party/ workman are denied. IInd party/management prays for rejection of claim of workman.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of South Eastern Coalfields Limited, Chirimiri Area in not promoting Shri Ravindra Tiwari as Electrician Grade-IV *w.e.f.* 2-6-1989 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	Ist party/workman is entitled to promotion to the post of Electrician Grade-IV *w.e.f.* 2-6-89 and monetary benefits.

REASONS

8. In support of his claim, Ist party Shri Ravindra Tiwari filed affidavit of his evidence at page 9/1 to 9/2 covering all the points. That he was appointed as Mazdoor from 9-7-82. He was promoted to electrical Helper Category- II *w.e.f.* 1-1-1987. The management issued circular dated 7-4-1989 stipulating criteria for the post of Electrician Cat.-IV. That his name was considered by DPC but his name was delected in the promotion order dated 2-6-89, junior employee Shri Seonarayan Yadav and Shri Sajan Prasad Patel were promoted. He was discriminated. He was promoted to the post of Electrician Cat.-IV *w.e.f.* 1-1-92, he was promoted to Electrician Cagetory.-V *w.e.f.* 1-7-98.

9 Ist party/workman has produced documents Exhibit W/6,7 & 8 to substantiate his evidence. In his cross-examination, Ist party says that he is Secretary of Bhartiya Mazdoor Sangh, MP. He knows about service condition of employees in Coal Mines. As per NCWA and Cadre Scheme, he was granted notional seniority from 1995 without wages. That he has passed Higher Secondary Examination with ITI Electrician at the time of his initial appointment in Category-I. His evidence in cross-examination does not show any ground for disbelieving his evidence.

10. The management submitted affidavit of evidence of its witness Shri O.P. Tamrakar consistent with the pleadings in the Written Statement filed by IInd Party. So far as contention of IInd Party that the dispute of promotion was settled in earlier dispute, any document are not produced on record. The order of reference made by the Govt. of India is not challenged. Therefore the contentions of IInd Party that reference is not tenable cannot be entertained. In his cross-examination, management's witness has stated that he was member of DPC. The members used to sign the proceedings of DPC. Such proceeding is not produced on record. The witness of management says that promotion order was issued by Dy. GM for Cat.-II and marked as Exhibit M-2. he admits that Shri Seonarayan Yadav and Shri Sajan Prasad Patel were promoted. They were also promoted to Category-IV as per document Exhibit M-3 & 4.

11. The Cadre Scheme Exhibit M-3 provides eligibility for Electrician and not in dispute. There is also no dispute about eligibility criteria by Ist Party for the said post. Document M-1- appointment order of Ist party workman dated 9-8-92 shows name of Ist Party appearing at Sl. No. 15. Document M-2 shows his name at Sl. No. 46 whereas names of shri Seonarayan Yadav and Shri Sajan Prasad Patel and appearing at Sl.No. 55 & 56. It is clear that they are junior to Ist Party. Documents M/4 - Shri Seonarayan Yadav and Shri Sajan Prasad Patel are promoted at Sl. No. 1 & 2 and name of Ist Party Shri Ravindra Tiwari appearing at Sl. No. 5 is erased. As per evidence in cross-examination of

management's witness, proceeding of DPC is not produced. Therefore reasons why Ist party Ravindra Tiwari was not promoted are not established when Shri Seonarayan Yadav and Shri Sajan Prasad Patel were junior to the Ist party Ravindra Tiwari are promoted. the denial of promotion to Ist party without cogent reasons is certainly a discriminatory act done in colourable exercise of powers. It cannot be sustained. As per document Exhibit M-5, Ist party was promoted to Electrician Grade-IV from 1-1-92 he was granted notional seniority on the post of electrician Category V as per document Exhibit M-6 dated 12-4-99.

12. The subsequent promotions given to Ist party cannot take away his right of promotion to the post of Electrician Category-IV from the date junior employees Shri Seonarayan Yadav and Shri Sajan Prasad Patel were promoted. For above reasons, the action of management denying promotion to Ist party is not legal. Accordingly I record my finding on Point No. 1.

13. In the result, I pass following award—

"1. The action of IInd party/managment denying promotion to Ist party of Electrician Category IV from 2-6-89 is illegal.

2. IInd party is directed to promote Ist party to the post of Electrician Grade-IV. *w.e.f.* 2-6-89 and to pay monetary benefits as per rules within 30 days.

नई दिल्ली, 18, मार्च, 2013

का॰आ॰ 880.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय पंणजी के पंचाट (संदर्भ संख्या आई टी 18/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 18/03/2013 को प्राप्त हुआ था।

[सं॰ एल-12012/09/2004-आई॰आर॰(बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, The 18th March, 2013

S.O. 880.—In pursuance of Section 17 of the Industrial Dispute Act, 1947, the Central Government hereby publishes the Award (Ref. No. IT/18/2004) of the Central Government Industrial Tribunal/Labour Court PANAJI now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of BANK OF INDIA and their workman, which was received by the Central Government on 18/03/2013

[No. L-12012/09/2004-IR(B-II)]
SHEESH RAM, Section Officer

ANNEXURE

IN THE INDUSTIAL TRIBUNAL AND LABOUR COURT GOVERNMENT OF GOA AT PANAJI

(BEFORE SMT. BIMBA K. THALY, PRESIDING OFFICER)

REF. NO. IT/18/2004

Shri Suresh G. Redkar,
H.No.101, Pedda Waddo,
Margao-Goa 403601 ... Workman/Party

V/s

Bank of India,
Zonal Office (Goa),
Dempo House,
Campal, Panaji. ... Employer/Party II

Workman/Party I is represented by Adv. Shri.S.K. Manjrekar

Employer/Party II is represented by Adv. Shri P.J. Kamat.

AWARD

(Passed on 28th day 01 January, 2013)

In exercise of the powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short the Act), the Central Government by order dated 31/5/04 bearing No. L-12012/9/2004-1R(B-II) has referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of Bank of India in terminating the services of Shri Suresh G. Redkar, sub staff *w.e.f.* 27/3/2003 is legal and justified? If not, to what relief is the concerned workman is entitled to?"

2. On receipt of the reference, a case was registered under No. IT/ 18/04 and registered A.D. notices were issued to the parties upon which Party I filed the claim statement at Exb. 3 and Party II filed the written statement at Exb. 8. Party I then filed the rejoinder at Exb. 9.

3. The case in short is that Party I was employed with Party II as a Sepoy cum Hamal (sub staff) and was required to do all such work as assigned to him from time to time. One of the duties assigned to Party I was to collect cash from the bank and make payment of electricity, telephone, water bills etc. The Party I was issued a charge sheet alleging that he had misappropriated an amount of Rs. 2730/- which was given to him on 22/2/2002 towards payment of electricity bill No. 494539 dated 12/2/02. It was also alleged that Party I had temporarily misappropriated an amount of Rs. 3229/- which was given to him on 23/10/01 for payment of electricity bill No. 456709 dated 22/10/01, by making the payment only on 7/11/2001. An enquiry in respect of the said charges was conducted. The Party I had admitted the charges leveled against him. The Enquiry Officer submitted

his findings on 16/1/2003 holding the Party I guilty of the charges leveled. Show cause notice was issued to Party I on the proposed punishment. By order dated 27/3/03, services of the Party I were terminated and the appeal filed by Party I was also dismissed by the Appellate Authority.

4. In the claim statement Party I has denied having committed any misconduct and has stated that the amount of Rs. 3229/- received by him from the bank in October towards the electricity bill dated 22/10/01 was not paid on the same day as there was a long queue and subsequently he remained busy with some other work. He has stated that he paid the said amount on 7/11/01 and according to him the delay in making payment was not intentional. He has denied that he had temporarily misappropriated the said amount. He has further stated that the amount of Rs. 2730/- which was received by him on 22/2/02 towards payment of electricaty bill dated 12/2/02, could not be paid on the same day due to heavy rush and also because he had to perform other duties. He has stated that on the next day while coming to the bank he lost the bill as well as the cash of Rs. 2730/-. The Party I has stated that he was unable to repay the money due to his poor financial condition and that he did not report the matter to the bank, out of fear. He has stated that the bank had sought his explanation *vide* letter dated 28/6/02 and he paid the entire amount with late charges and interest on 11/7/02. He has stated that he explained to the bank the circumstances under which the amount had remained unpaid. He has stated that the bank authorities had closed the matter being satisfied with the explanation given. Party I has stated that on 18/10/02 he was called to the Zonal Office Panaji and was told that his statement was required for records and he was asked to write and sign the statement as dictated by the officer of the bank. He has stated that he was thereafter issued a charge sheet, which was vague, ambiguous and belated. He has stated that the charge sheet was based on the settlement dated 10/04/02 and according to him as the alleged misconduct was committed prior to the settlement, he could not have been charged for the said misconduct on the basis of the said settlement. Party I had challenged the fairness of the enquiry.

5. In the written statement, it is the case of Party II that Party I had committed acts specified in the charge sheet which acts constitute misconduct under Bi-partite settlements. Party II has stated that Party I did not give his explanation to the charge sheet. Party II has stated that Party I was represented in the enquiry by his representative Shri. G.V. Wagle and that he and his representative had fully participated in the enquiry. The Party II has stated that the charges were explained to the Party I and that he had admitted the charges voluntarily and unconditionally. Party II has stated that the statement of the Party I was recorded as per his say. The copy of the findings of the Enquiry Officer was furnished to the Party 1 along with the show cause notice on proposed punishment. The Party I was given a personal hearing and on considering the gravity of the misconduct, the services of the Party I were terminated *w.e.f.* 27/3/03. Thus. Party II has stated that Party I is not entitled to any relief.

6. Based on the pleadings of the parties, the following issues were framed:—

1. Whether the Party I proves that the domestic enquiry held against him is not fair and proper?
2. Whether the charges of misconduct are proved to the satisfaction of the Tribunal by acceptable evidence?
3. Whether the Party I proves that the action of the Party II in terminating his services *w.e.f.* 27/3/03 is illegal and unjustified?
4. Whether the Party I is entitled to any relief?
5. What Award?

7. Issue No.1 and 2 were treated as preliminary issues and by order dated 8/12/08 issue No.1 was answered in the negative and the issue No. 2 was answered in the positive.

8. In the course of evidence on issue No. 3, 4 and 5 Party I examined himself and closed the case. Party II did not lead evidence on these issues.

9. Heard Lnd. Adv. Shri. S.K. Manjrekar for Party I and Lnd. Adv. Shri. P.J. Kamat for Party II. Both the Lnd. Advocates filed written submissions at Exb. 52 and Exb. 53 respectively.

10. I have gone through the records of the case and have duly considered the arguments advanced. My findings on the issue No. 3, 4 and 5 are as under:

Issue No. 3..... in the negative.
Issue No. 4..... in the negative.
Issue No. 5..... as per order below.

REASONS

11. **Issue No. 3:** In his arguments Lnd. Adv. Shri. Manjrekar stated that Party I did not pay bill of Rs. 2730/- in time but according to Party II a bill of Rs. 11597/- was received by the bank on 24/6/02 and thus it is evident that another two bills which were issued in between were also not paid. He also stated that the total arrears shown was Rs. 7503/- and even after adjusting unpaid bill given to Party I there is difference of Rs. 4773/-. According to him, subsequent two bills given to some other messenger were also not paid but bank has not taken action against those messengers. Thus, he stated that bank has discriminated in the matter and has thereby victimized Party I and therefore considering the above aspect punishment imposed is disproportionate to the proved misconduct.

12. Lnd. Advocate for Party I also stated that Party I paid the amount of Rs. 2730/- of the lost bill and also paid fine of Rs. 216/-. He stated that bank has considered the said amount of electricity bill as temporary overdraft to Party I and collected the interest per month for the period from March to June, besides fine on the said amount. Thus, according to him no loss has been caused to the bank and that Party I should not have been punished once again by way of termination of services for the same offence.

13. On the other hand Lnd. Adv. Shri. P. J. Kamat stated that honesty in financial institution is a prime factor and misappropriation of money causes loss to the institution and the institution in turn looses confidence in the employee. He also stated that no sympathy could not be shown to the employee who is involved in the misappropriation of the amount, in a financial institution.

14. I do not find force in the submissions advanced by Lnd. Advocate for Party I on the subject of discrimination by the bank and this is because, the same is obviously not a ground to be considered while deciding the quantum of punishment. It may be mentioned here that each case has to be decided on the basis of the facts of the said case so also the evidence brought on record to establish those facts and therefore the concept of so-called discrimination on the part of the bank cannot be looked into while deciding this issue. That apart, payment of penalty and interest to the bank, by itself cannot, undo the acts of misappropriation committed by Party I as the bank has recovered the same as per its procedure. Thus, these aspects cannot weigh in favour of Party I to say that the punishment imposed is disproportionate to the proved misconduct.

15. Lnd. Advocate for Party I relied on the judgment in the case of Ravindra N. Chaudhari v/s. Zonal Manager, IDBI Bank Ltd. 2012 LLR 1267 in which the workman who had misappropriated the money on temporary basis was terminated from services and upon he raising an industrial dispute he was granted reinstatement without back wages. The workman filed writ petition demanding reinstatement with full back wages and continuity of service and it has been held that the reinstatement should not be always followed by back wages in every case. In this case, no evidence was led by the bank to show that concerned workman had fabricated the record as alleged and he was guilty of misappropriation. Contrary to this, in the instant case the workman had admitted in his statement dated 18/10/02 (Exb. 24), Appeal Memo dated 21.4.03 (Exb. 29) and in his plea that he had appropriated the said amount to his personal use and therefore the observations in the above case are not applicable to the case in hand.

16. On the other hand Lnd. Advocate for Party II relied on the judgment in the case of Janatha Bazar v/s. The Secretary, Sahakari Noukarara Sangha 2000(87) FLR 483 the observations in which indicate that once the act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employee in service. It is also held in this judgment that in case of proved misappropriation, there is no question of considering past record and it is the discretion of the employer, to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases.

17. Lnd. Advocate for Party II also relied on the judgment in the case of Divisional Controller, M.S.R.T.C., Division Office, Buldana v/s. Pramod Onkarao Deshmukh 2007 ICLR 271 in which the respondent who was a bus conductor in appellant corporation was found to have collected ticket fare from three passengers without issuing tickets to them and as such he was dismissed from service and upon challenge, Labour Court held termination to be proper but the Industrial Court found the punishment, to be shockingly disproportionate and directed his reinstatement. The writ petition filed by the appellant was dismissed but in writ appeal it was held that there was absolutely no material on record to hold that the punishment which was imposed upon the respondent was shockingly disproportionate to the proved misconduct. It is observed in this judgment that the misconduct being related to the misappropriation of money and resultant loss of confidence in the respondent by the management of the corporation, the punishment, could not have been said to be disproportionate to the proved misconduct.

18. In the instant case *vide* order dated 8/12/08 it is held that the material on record amply proves that an amount of Rs. 2730/- was given to Party I on 23/10/01 for payment of electricity bill so also that the statement at Exb. 24, the appeal memo at Exb. 29 and the plea of the Party I indicates that the Party I had appropriated the said amount to his personal use. It is also held that Party I had paid the bill of Rs. 2730/- only on 11/7/02 after receipt of show cause notice where as the amount of Rs. 3229/- was paid after a period of 15 days. It is further held that there was thus misappropriation/temporary misappropriation of the amount, which was given to the Party I for payment of bills. It is further observed that such acts are certainly prejudicial to the interest of the bank and constitute misconduct under clause 5(j) of the Bipartite settlement.

19. In the light of above observations *viz-a-viz* the ratios culled out in the judgments in the cases of Janatha Bazar and Pramod 0. Deshmukh (both cited supra) the punishment imposed on the Party I herein cannot be said to be shockingly disproportionate to the proved misconduct.

20. Be that as it may, in his arguments Lnd. Advocate for Party I invited my attention to the practice which was prevailing at Quepem branch of the bank which was to handover the cash and bills to the messenger who used to

pay those bills on the same day or on the subsequent day as and when he got time and if not paid on that day the cash handed over to him was not to be re-deposited and that from 17/7/03 the bank had started the procedure of making payment by way of pay order or demand draft. He also stated that he had tried to seek the required information on the above subject from the Public Information Officer of the Bank and upon their refusal, from the Appellate Authority who informed him that the branch has started payment by demand draft *w.e.f.* 17/7/03. It is his contention that the above documents would prove the innocence of Party I as, Party I has been unnecessarily punished for the faulty procedure, which was being followed by the bank. It may be mentioned here that, Party I has not produced any documentary evidence on the above subject and even for that matter since *vide* order dated 8/12/08 it is held that the charges of misconduct are proved to the satisfaction of the Tribunal by acceptable evidence, it is now not open to Party I to re-agitate this issue by saying that those documents, if furnished to him, would prove his innocence.

21. Be that as it may, Party I has been held guilty of misconduct under clause 5(j) of the settlement dated 10/4/02 (Exb. 38). clasue 6 of Exb. 38 provides that an employee found guilty of gross misconduct may:

(a) be dismissed without notice; or

(b) be removed from services with superannuation benefits *i.e.* Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification for further employment; or

(c) be compulsorily retired with superannuation benefits *i.e.* Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or

(d) be discharged from service with superannuation benefits *i.e.* Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or

(e) be brought down to lower stage in the scale of pay up to a minimum of two stages; or

(f) have his increments stopped with or without cumulative effect; or

(g) have his special pay withdrawn; or

(h) be warned or censured, or have an adverse remark entered against him; or

(i) be fined.

22. The punishment awarded in this case is of removal from service with superannuation benefits *i.e.* Pension and/or Provident Fund and Gratuity without disqualifying the Party I from future employment and therefore it is clear that compared to the acts or proved misconducts committed by the Party I, the punishment is not shockingly disproportionate. Thus, I find no force in the submissions of Lnd. Advocate for Party I that punishment imposed on the Party I is illegal, unjustified and bad in law. Hence my findings.

23. **Issue No. 4:** In view of discussion supra, Party I is not entitled to any relief.

24. In the result, I pass the following

ORDER

1. It is hereby held that the action of the management of Bank of India in terminating the services of Shri. Suresh G. Redkar, sub staff *w.e.f.* 27/3/2003, is legal and justified.

2. The Party I Shri. Suresh G. Redkar is therefore not entitled to any relief.

3. No order as to costs.

Inform the Government accordingly.

Place: Panaji. B.K. Thaly, Presiding Officer
Dated: 28/1/2013

नई दिल्ली, 18 मार्च 2013

का॰आ॰ 881.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **सिंडीकेट बैंक** के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय 1, दिल्ली के पंचाट (संदर्भ संख्या आई॰डी नं॰ 268/2011) को प्रकाशित करती है, जो केंद्रीय सरकार को 18/03/2013 को प्राप्त हुआ था।

[सं॰ एल-12012/185/2002-आई आर (बी-II)
शीश राम, अनुभाग अधिकारी

New Delhi, the 18th March, 2013

S.O. 881.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the award (I.D. No. 268/2011) of the Central Government Industrial Tribunal/Labour Court-I, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SYNDICATE BANK and their workman, which was received by the Central Government on 18/03/2013.

[No. L-12012/185/2002-IR(B-II)
SHEESH RAM, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI

I. D. No.268/2011
Shri Virender Singh,
121-B, Bank Colony,
Vill. Mandoli,
Delhi — 110093. Workman...

Versus

The Asst. General Manager,
Syndicate Bank,
Sarojini House,
6-Bhagwan Dass Road,
New Delhi-110001. Management...

AWARD

A clerk posted at Chandni Chowk branch, Syndicate Bank (in short the bank) was served with a charge sheet, since he resorted to excessive borrowings beyond his repaying capacity,from the bank as well as outside agencies, stood co-obligant to loans availed by other employees from co-operative societies without prior permission from the competent authority and availed loans from a co-operative society by way of submission of false/forged documents and when it came to light, he abruptly closed that account, obtained documents, in original, from the society and destroyed the same to conceal his fraudulent act. He did not submit reply to the charge sheet. A domestic enquiry was constituted against him. The Disciplinary Authority concurred with the report of the Enquiry Officer and awarded punishment of compulsory retirement from service. His appeal also came to be dismissed. Aggrieved by the act of the bank, the clerk raised an industrial dispute before the Conciliation Officer. Since his claim was contested by the bank, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No.L-12012/185/2002-IR(B-II), New Delhi dated 25.03.2003 with following terms:

> "Whether action of the management of Syndicate Bank in terminating service of Shri Virender Singh, ex-clerk, employee No.449755 (through compulsory retirement from service) with effect from 05.03.2010 is just, fair and legal? If not, what relief the concerned workman is entitled to and from which date?"

2. Claim statement was filed by the clerk, namely, Shri Virender Singh, pleading therein that charge sheet was served upon him levelling allegations of excessive borrowings from outside agencies and submission of some false documents. Subsequently, a departmental enquiry was conducted wherein employer submitted a document, which was simply an office note. No reasonable opportunity was given to him to cross examine author of that document. Other vital documents, relating to the charge, were not allowed to be dispelled by way of examination of their authors. No ocular or documentary evidence was placed on record to establish that he submitted false documents to outside agencies to procure loan and later on adjusted the loan and destroyed those documents.

3. He asserts that the bank had denied legitimate financial help to him like demand loan and festival advance, even in event of the immediate marriage of his sister. He was compelled by his employer to borrow money from outside sources. The bank had failed to prove that loans taken by him from outside agencies, were beyond his repaying powers. He had not indulged in excessive borrowings from outside agencies. He obtained loan for the marriage of his sister. When that loan was obtained, he was drawing a sum of Rs.12,000.00 per month as his wages. The bank had issued no circular to bar an employee to procure loan from outside agencies. Even otherwise, procuring loans from outside agencies amounts to minor misconduct. According to him, he was entitled to avail loan facilities like housing loan, demand loan, vehicle loan, festival loan, PF Loan and Thrift and Credit Society loans, medical advance for his heart surgery, leave travel and leave encashment advance and additional housing loan, totalling to Rs.16 lakh as per his service conditions. The bank had illegally refused to provide these financial facilities to him and as such he was compelled to procure small amount of loans from outside thrift and credit societies, which loans were within his repaying capacity.

4. He agitates that he was wrongly charge sheeted for grave misconduct of doing acts prejudicial to the interest of the bank. Since he had already repaid the loans, no loss was caused to the bank. No dues certificate was produced by him even prior to passing of final order of punishment. The Disciplinary Authority implemented order dated 05.03.2001 without waiting for the order of the Appellate Authority. He claims that orders passed by the Disciplinary Authority as well as the Appellate Authority may be declared illegal and he may be reinstated in service of the bank, with continuity, full back wages and all consequential benefits.

5. Claim was demurred by the bank pleading that the claimant resorted to excessive borrowing beyond his repaying capacity from the bank as well as outside agencies. He stood co-obligant to loans availed by other employees from co-operative societies without obtaining prior permission from the competent authority. He concealed his direct and indirect liabilities, while availing loans from the bank under staff loan schemes. He availed loan of Rs.1 lakh from Gharonda Nationalized Bank Employees Salary

Earners Co-operative Thrift and Credit Society, Karnal, by submitting false/forged documents. When matter came to light, he arranged closure of the said loan abruptly, obtained documents from the said society and destroyed it to conceal his fraudulent acts. Charge sheet was served upon the claimant, to which he opted not to submit reply. A domestic enquiry was constituted. Enquiry Officer conducted enquiry on several dates by giving fair and reasonable opportunities to defend his case. Enquiry was in consonance with principles of natural justice. Enquiry Officer submitted his report dated 30.12.2000, wherein he concluded that charges levelled against him stood proved. Copy of the enquiry report was submitted, to which he had not offered his comments. The Disciplinary Authority proposed punishment of retirement from service. Personal hearing was given to the claimant and punishment of compulsory retirement from service was awarded *vide* order dated 05.03.2001. The Appellate Authority also gave personal hearing to the claimant, who found no substance in his appeal. His appeal was dismissed *vide* order dated 22.06.2001.

6. The bank disputes that legitimate financial help was denied to him. He had already availed most of loan facilities available from the bank, such as demand loan, vehicle loan, secured overdraft, housing loan, additional housing loan etc. He borrowed heavily from outside agencies apart from availing loans from the bank, beyond his repaying capacity. Societies were forced to initiate recovery steps against him. Attachment orders were also obtained by the societies against the claimant. He issued various cheques, out of which 18 cheques were returned unpaid from September 1999 to April 2000. Those cheques were returned unpaid, since he had availed loans beyond his repaying capacity. His acts not only tarnished image of the bank but he dragged the bank into avoidable litigation. He also resorted to submission of false and forged documents for availing loans from Gharonda Nationalized Bank Employees Salary Earners Co-operative Thrift and Credit Society, Karnal. His acts were highly detrimental to the image, reputation and standing of the bank. It is wrong to assert that he had committed minor misconduct. Misconduct committed by him was a grave one. It does not lie in the mouth of the claimant to project that no prejudice was caused to the interest of the bank, since no financial loss was there.

7. The bank asserts that order dated 05.03.2001 commensurate to his misconduct. Being a public sector financial institution, the bank deals with public money. An employee, who has lost integrity and honesty, cannot continue in service. If such an employee is allowed to continue in service, it would cause high prejudice to the interest of the bank, since public will lose faith and confidence in banking system. Image of the institution would seriously be affected if such an employee is kept on rolls of the bank. A banking company needs absolute devotion, diligence, integrity and honesty from its employees. It is wrong to allege that the Disciplinary Authority implemented its order without waiting for the orders of Appellate Authority. Once a punishment is awarded to an employee, it becomes operative without awaiting orders of the Appellate Authority. There is no case in favour of the claimant for his reinstatement in service with continuity full back wages and all consequential benefits.

8. In rejoinder, claimant reiterates facts pleaded in the claim statement.

9. On pleadings of the parties, following issues were settled:

(i) Whether the enquiry is fair and proper ?

(ii) As in terms of reference.

10 Vide order No.Z/22019/6/2007-IR(C-II), New Delhi dated 11.02.2008, case was transferred to Central Government Industrial Tribunal No.II, New Delhi, for adjudication by the appropriate Government. It was retransferred to this Tribunal for adjudication *vide* order No.Z-22019/6/2007-IR(B-II), New Delhi dated 30.03.2011 by the appropriate Government.

11. On consideration of facts testified by the claimant and those detailed by Shri T.R. Rajagopalan, preliminary issue was answered in favour of the claimant and against the bank, *vide* order dated 06.09.2011.

12.To prove misconduct, the bank examined Shri Ashok Kumar and Shri M.P. Vishwanathan in the case. Claimant entered the witness box again to rebut facts unfolded by the aforesaid two witnesses. No other witness was examined by either of the parties.

13. Arguments were heard at the bar. Shri Rajesh Mahindru, authorized representative, advanced arguments on behalf of the bank. Shri Harish Sharma, authorised representative, presented case on behalf of the claimant. Written submissions were also filed by the claimant. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

Issue No. 2

14. Shri Ashok Kumar unfolds in his affidavit Ex.MW2/A, tendered as evidence, that charge sheet Ex.MW2/1 was served on the claimant. While working as clerk at Chandni Chowk branch of the bank, he maintained Saving Bank Account No.526, which was subsequently renumbered as 70256. He also maintained Staff Overdraft Account No.72/98. He issued cheques drawn on these accounts, without maintaining sufficient balance to meet proceeds of those cheques. He issued four cheques amounting to Rs.70536.20 drawn on saving bank account. He had also issued 14 cheques aggregating to Rs.37527.00

drawn on his overdraft account, which cheques were returned unpaid for want of balance. Details of those cheques are mentioned in Ex.MW1/2 and Ex.MW1/7 respectively. Three cheques for an amount of Rs.17500.00, drawn on overdraft account, were presented more than once and returned unpaid for want of balance. Details of these cheques are mentioned in Ex.MW2/4. Copy of statements of saving bank account and overdraft account are Ex.MW2/4 and Ex.MW2/5 respectively. Copy of cheque and draft return register is Ex.MW2/7. Letter dated 06.09.1999, which is Ex.MW2/8, was issued to the claimant, which was replied by him on 07.09.1999. Copy of the said reply is Ex.MW2/9. *Vide* letter Ex.MW2/10, matter relating to issuance of cheques without maintaining balance was reported to the Zonal Office. Claimant failed to follow guidelines of the bank, issued as per circular No.80/88/BC and 90/94/BC.

15. He narrates that the claimant had taken advance of Rs.80,000.00 from demand loan account No.38/98, a sum of Rs.22,960.00 from OSL account No.7/98, Rs.9000.00 from overdraft account No.7298, Rs.172533.00 towards Housing Loan and a sum of Rs.90,000.00 as additional housing loan from the bank. He also took a loan of Rs.35,000.00 from M/s Sweekar Finance Pvt. Ltd. and Rs.10,000.00 from Shri Avish Nagpal. He had an outstanding balance of Rs.13,810.00 towards Mittal Engineering Corporation, a sum of Rs.40,000.00 towards Delhi Co-operative Thrift and Credit Society, Rs.50,000.00 towards National Bank Employees Co-operative (NA) Thrift and Credit Society, Rs.50,000.00 towards Jwala Co-operative Urban Thrift and Credit Society and Rs.1 lakh towards Gharonda Nationalized Bank Employees Salary Earners Co-operative Thrift and Credit Society, Kernal, as per information received from them. Details of his borrowings from outside agencies and outstanding liabilities are enlisted in Ex.MW2/11. It was observed that he borrowed beyond his capacity to repay, since he defaulted in repaying dues to certain lenders. Details of his defaults are mentioned in Ex.MW2/12. Some of the societies have addressed letters dated 23.02.2000, 22.01.1999, 17.05.2000, 05.06.2000, 18.02.1999, 07.06.1999, 26.04.1998, 30.06.2000 and 28.06.2000 to the bank. These letters are Ex.MW2/13 to Ex.MW2/15 and Ex.MW2/17 to Ex.MW2/23. Attachment orders were issued by the Assistant Collector, Co-operative Societies, which orders are Ex.MW2/16.

16. On 22.06.1998, he submitted application for availing loan from Asaf Ali Road branch of the bank, wherein he did not mention his direct and indirect liability from outside agencies. He concealed facts relating to borrowings from outside agencies, while taking loan from the bank. Copy of loan application and estimate of amount to be spent on kaan chedan ceremony of his daughter are Ex.MW2/24 and Ex.MW2/25 respectively. He also stood surety for loans, availed by Shri S.P.S. Sandhu and Shri Net Ram and executed surety bonds which are Ex.MW2/26 and Ex.MW2/27 respectively. He had not obtained permission from the competent authority when he became a co-obligant for aforesaid employees. He had also not reported these facts to the bank and acted against guidelines issued in that regard.

17. Shri Ashok Kumar declares that the claimant deposited DD No.L 74035 dated 23.05.2000 for a sum of Rs.49,000.00 issued by State Bank of Patiala, Karnal, in favour of the manager of the bank, to be credited to salary account No.70526 maintained by him at Chandni Chowk branch of the bank. Copy of draft and pay in slip are Ex.MW2/28 and Ex.MW2/29 respectively. He also deposited DD No.L 40775 issued by State Bank of Patiala in favour of the manager of the bank to be credited to salary account No.70526 maintained by him with Chandni Chowk branch of the bank. Copy of demand draft and pay in slip are Ex.MW2/20 and Ex.MW2/31 respectively. Above demand drafts were proceeds of the loan, taken by him from Gharonda Nationalized Bank Employees Salary Earners Co-operative Thrift and Credit Societies, Karnal. Since the bank had neither forwarded any application for taking loan by the claimant, nor gave any no objection certificate in that regard, it called for details of demand drafts from the claimant, *vide* letter dated 24.05.2000. In his reply dated 13.06.2000, which is Ex.MW2/32, the claimant disclosed that he had obtained loan from the aforesaid society. The bank sought verification of details from the society, *vide* letter dated 16.06.2000. Society informed the bank, *vide* its letter dated 27.06.2000 that the claimant had availed loan on 29.05.2000 and had adjusted that loan in full and final settlement and nothing was outstanding from him. The society had requested for return of demand drafts purchased by them against loan proceeds availed by the claimant. Reasons of request for return of the drafts to the society were not mentioned in the letter, copy of which is Ex.MW2/33. The claimant also requested the bank for return of those drafts, *vide* his letter dated 30.06.2000. Letter written by the claimant and the one written by the society are Ex.MW2/39 and Ex.MW2/40 respectively.

18. The witness announces that the claimant availed sick leave from 22.06.2000 to 27.06.2000. His leave application and medical certificates are Ex.MW2/34 to Ex.MW2/38. On 26.06.2000, Shri M.P. Vishwanathan, Deputy Chief Officer, was deputed to visit the society for verification of documents/loan application, submitted by the claimant for raising loan. *Vide* his office note dated 01.07.2000, Shri Vishwanathan reported that he visited office of the society and verified documents/loan application, submitted by the claimant. Shri Vishwanathan reported that the claimant executed loan application in blank, over which bank seal was affixed on two pages of the documents with signature No.9554B written below the signatures. The said number was allotted to him(witness), when he was posted at Chandni Chowk branch of the bank. He wrote letter Ex.MW2/43 and denied that he had signed

those documents on behalf of the bank or in his personal capacity.

19. Shri Ashok Kumar details that the claimant, *vide* letter dated 16.08.2000,informed the bank that the documents collected by him from the society were lost, copy of which letter is Ex.MW2/41. These facts project that the claimant submitted non-genuine letter/undertaking on behalf of the bank for availing loan from the aforesaid society. He preferred to adjust the loan in a hurry, while being on sick leave, without actually receiving the loan proceeds. These facts indicate that it was so done with a view to hide facts which go to establish that he had submitted non-genuine documents/letters containing his forged signatures. To conceal his fraudulent acts, he hurriedly closed the loan, received original documents from the society and destroyed it. Claimant prepared false documents in the name of the bank, affixed seal of the bank, forged his signatures(witness) and availed loan from the society.

20. Shri M.P. Vishwanathan details in affidavit Ex.MW3/A, tendered as evidence, that at the relevant time, he was working as Deputy Chief Officer(Vigilance), New Delhi. At the instructions of the Chief Vigilance Officer, he visited office of the Gharonda Nationalized Bank Employees Salary Earners Co-operative Thrift and Credit Society, Karnal, located at Kothi No. 1344, Sector 9, Urban Estate, Karnal, on 26.06.2000. He met Shri Komal Prakash, President of the society, who showed documents and loan application submitted by the claimant, for availing loan. Loan application was executed in bank. Seal of the bank was affixed on two pages of the document with signature and number 9554B written beneath the signatures. Shri Komal Prakash told him that the claimant had availed loan of Rs.1 lakh. He requested Shri Komal Prakash to supply certified copies of those documents, who told him that the documents would be sent to the bank by post, after consulting the Secretary of the Society. He again visited the office of the Society on 28.06.2000 for collection of photocopy of documents, after telephonic discussions with the Secretary of the Society. When he reached the office of the Society on 28.06.2000, Shri Rathore, Secretary of the Society, informed him that the claimant has closed his account on 27.06.2000. Documents were handed over to the claimant. Shri Rathore issued letter dated 27.06.2000 in that regard, which is Ex.MW2/40. He prepared his note narrating the whole incident, which note is Ex.MW2/42.

21. In his affidavit Ex.WW1/B, tendered as evidence, the claimant details that the entire action of the bank is based on prejudice and bias qua him. The bank did not care to see before start of the enquiry that he had already cleared his dues. His request for renewal of demand loan was rejected by the bank in October 1999. For other employees, such facilities were renewed in routine. He asserts that details of dishonoured cheques are irrelevant since payees of those cheques had not initiated any action, when cheques were dishonoured. He had issued cheques in hope of getting his demand loan renewed. Refusal of renewal of demand loan resulted into dishonour of those cheques. The bank had not suffered any loss on account of return of those cheques as unpaid. He deposited two drafts in his SB account, which were withheld without any intimation and assigning any reason. There was no valid reason withholding credit of those drafts, except to show him in very bad shape. On one hand, he has been shown as a person who resorted to excessive borrowings and failed to honour his cheques and on the other his two demand drafts were withheld with a view to victimise him.

22. He details that documents received by him from Gharonda Nationalized Bank Employees Salary Earners Co-operative Thrift and Credit Society, Karnal, were lost in a crowded bus. He informed the bank in that regard and lodged a report with the police. There was no reason for the bank to disbelieve his submissions in that regard. Those documents were proof of repayment of his debt. He would not destroy them to his own peril. He does not dispute that he became co-obligant to loans of two employees. However, he projects that a number of employees like him have stood co-obligant for loans taken by other employees. When penalty was proposed, the Disciplinary Authority failed to consider his representation dated 29.01.2001. His appeal was also dismissed, without considering the entire record. During course of cross examination, he concedes that he availed loan facilities from the bank. He also admits that he took loan of Rs.35,000.00 from Sweekar Finance Pvt. Ltd. and loan of Rs.10,000.00 from Shri Avish Nagpal, which loans were taken in 1988. Loan of Rs.40,000.00 was taken from Mittal Engineering Corporation in 1997. Loan of Rs.40000.00 was taken from the Delhi Co-operative Thrift and Credit Society in 1997. Loan of Rs.25000.00 was obtained from Green Co-operative Thrift and Credit Society in 1996. He borrowed Rs.50000.00 from Nationalized Bank Employees Co-operative (NA) Thrift and Credit Society in 1999. A sum of Rs.50,000.00 was borrowed from Jwala Co-operative Urban Thrift and Credit Society in February 1996. He also availed loan of Rs.48000.00 from Delhi Nagrik Sehkar Bank in 1986. A sum of Rs.7800.00 was his liability towards Hissar District Bank Urban Salary Earners Thrift and Credit Society in 1998. He admits that all above loans were pending against him in 1998.

23. When facts unfolded by Shri Ashok Kumar, Shri M.P. Vishwanathan and those detailed by the claimant are appreciated, it came to light that the claimant resorted to borrowings from various outside agencies without permission of the competent authority. He does not feel shy in admitting his liabilities. On the other hand, he raises an accusing finger on the bank alleging that his demand loan facility was not renewed, which led to a situation that cheques issued for repayment were dishonoured. He attacks the bank agitating that his demand drafts were

withheld intentionally without any intimation to him and justification in that regard. According to him, the bank had not suffered any loss when he resorted to outside borrowings and issued cheques, which were dishonoured. It has also not been disputed that when he failed to make repayment of loan amounts to the societies, they wrote to the bank requesting repayment of amounts. He does not dispute letters Ex.MW2/13 to Ex.MW2/23, written by those societies to the bank requesting for repayment of loan amounts.

24. Whether his conduct in that regard amounts to misconduct? For an answer to this proposition, it is expedient to note disciplinary powers available to the bank. Shastri Award enlists gross misconduct and minor misconduct, in respect of which disciplinary action may be taken against an employee. In para 521 (4) it defines gross misconduct as following acts and omissions on the part of an employee:

> "(4) By the expression "gross misconduct" shall be meant any of the following acts and omissions on the part of an employee;
>
> (a) engaging in any trade or business outside the scope of his duties except with the permission of the bank;
>
> (b) unauthorized disclosure of information regarding the affairs of the bank or any of its customers or any other person connected with the business of the bank which is confidential or the disclosure of which is likely to be prejudicial to the interests of the bank;
>
> (c) drunkenness or riotous or disorderly or indecent behavior on the premises of the bank;
>
> (d) willful damage or attempt to cause damage to the property of the bank or any of its customers;
>
> (e) willful insubordination or disobedience of any lawful and reasonable order of the management or of a superior;
>
> (f) habitual doing of any act which amounts to "minor misconduct" as defined below, "habitual" meaning a course of action taken or persisted in notwithstanding that at least on three previous occasions censure or warnings have been administered or an adverse remark has been entered against him;
>
> (g) wilful slowing down in performance of work;
>
> (h) gambling or betting on the premises of the bank;
>
> (i) speculation in stocks, shares, securities or any commodity, whether of his account account or that of any other persons;
>
> (j) doing any act prejudicial to the interests of the bank, or gross negligence or negligence involving or likely to involve the bank in serious loss;
>
> (k) giving or taking a bribe or illegal gratification from a customer or an employee of the bank;
>
> (I) abetment or instigation of any of the acts or omissions above mentioned".

25. In para 521(5) penalties which may be imposed for gross misconduct have been detailed, which are extracted thus:

> "(5) An employee found guilty of gross misconduct may:
>
> (a) be dismissed without notice, or
>
> (b) be warned or censured, or have an adverse remark entered against him, or
>
> (c) be fined, or
>
> (d) have his increment stopped, or
>
> (e) have his misconduct condoned and be merely discharged.

26. Minor misconduct shall mean any of the following acts and omission on the part of an employee, as obtained in para 521 (6) of the Shastri Award:

> "(6) By the expression "minor misconduct" shall be meant any of the following acts and omissions on the part of an employee;
>
> (a) absence without leave or overstaying sanctioned leave without sufficient grounds;
>
> (b) unpunctual or irregular attendance;
>
> (c) neglect of work, negligence in performing duties;
>
> (d) breach of any rule of business of the bank or instruction for the running of any department;
>
> (e) committing nuisance on the premises of the bank;
>
> (f) entering or leaving the premises of the bank except by an entrance provided for the purpose;
>
> (g) attempt to collect or collecting monies within the premises of the bank without the previous permission of the management or except as allowed by any rule or law for the time being in force;

(h) holding or attempting to hold or attending any meeting on the premises of the bank without the previous permission of the management or except in accordance with the provisions of any rule or law for the time being in force;

(i) canvassing for union membership or collection of union dues or subscriptions within the premises of the bank without the previous permission of the management or except in accordance with the provisions of any rule or law for the time being in force;

(j) failing to show proper consideration, courtesy or attention towards officers, customers or other employees of the bank; unseemly or unsatisfactory behavior while on duty;

(k) marked disregard of ordinary requirements of decency and cleanliness in person or dress;

(l) incurring debts to an extent considered by the management as excessive;"

27. Punishment which may be awarded for minor misconduct have been maintained in para 521(7) of the said award, which are extracted thus:

"(7) An employee found guilty of minor misconduct may:

(a) be warned or censured ; or

(b) have an adverse remark entered against him; or

(c) have his increment stopped for a period not longer than six months".

28. In para 18.28, Desai Award makes it clear that procedure laid down by Shastri Tribunal "for termination of employment and taking other disciplinary action" in paragraphs 520 and 521 and in paragraphs 518 and 519 to the extent quoted above, subject to the modification indicated shall remain the same.

29. In bipartite settlement dated 19th October, 1996, commonly known as 1st bipartite settlement, no change was made either in the misconducts described as gross misconduct or minor misconduct, besides penalties provided for the same. In para 19.9 it was mentioned that a workman found guilty of a misconduct, whether gross or minor, shall not be given more than one punishment in respect of any one charge. In settlement dated 22.11.79, punishments provided for gross-misconduct were supplemented with following punishments, besides those already provided:

(a) have his special allowance withdrawn, or

(b) have his pay reduced to the next lower stage up to a maximum period of two years, in case he had reached the maximum in the scale of pay.

30. In sixth bipartite settlement dated 14.2.95 following sub clauses were added under the head "gross misconduct", defined in 1st bipartite settlement and Shastri Award:

(p) remaining unauthorisedly absent without intimation continuously for a period exceeding 30 days;

(q) misbehaviour towards customers arising out of bank's business;

(r) contesting election for Parliament/Legislative Assembly/Legislative Council/local bodies/municipal corporation/ panchayat, without explicit written permission of the bank;

31. Following clauses were also added under "minor misconduct" defined in 1st bipartite settlement and Shastri Award:

(n) refusal to attend training programmes without assigning sufficient and valid reason.

(o) not wearing while on duty, identity card issued by the bank.

32. Punishments, provided for gross misconduct by Shastri Award and 1st settlement were substituted by sixth bipartite settlement. In para 21 (4) following Punishments were provided for gross misconduct.

(a) be dismissed without notice; or

(b) be removed from service with superannuation benefits *i.e.* Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment ; or

(c) be compulsorily retired with superannuation benefits *i.e.* Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations preailing at the relevant time and without disqualification from future employment ; or

(d) be discharged from service with superannuation benefits *i.e.* Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment ; or

(e) be brought down to lower stage in the scale of pay up to a maximum of two stages; or

(f) have his increment/s stopped with or without cumulative effect; or

(g) have his special pay withdrawn; or

(h) be warned or censured, or have an adverse remark entered against him; or be find.

33. As projected above, incurring debts to an extent considered by the management as excessive was coined as a minor misconduct by the Shastry Award. 6th Bipartite Settlement dated 14.02.1995 added some clauses under the head gross misconduct as well as minor misconduct, leaving misconduct of incurring debts to the extent considered by the bank as excessive unchanged. Therefore, it is apparent that if an employee incurs debts to an extent considered by the bank as excessive, it is a minor misconduct. Question for consideration would be as to whether the bank had been able to establish that the claimant had incurred debts, which were excessive. On that aspect, Shri Ashok Kumar highlights that the claimant had drawn cheques on his saving bank account as well as overdraft account, which stood dishonoured for want of funds. Four cheques, details of which are given in Ex.MW2/2 were dishonoured, when sufficient funds were not there in saving bank account of the claimant. 14 cheques, details of which are enlisted in Ex.MW2/3, drawn on overdraft account, were dishonoured. Cheques were relating to amount of Rs.70536.20 and Rs.37527.00 respectively. Copy of statement of saving bank account No.70526 and overdraft account No.7298, which are Ex.MW2/15 and Ex.MW2/16 respectively, have been perused. It emerges over the record that the claimant issued cheques to the parties without maintaining adequate balance in aforesaid accounts and thus cheques were returned unpaid. Claimant projects a picture that in the year 1998, he used to pay a sum of Rs.11,000.00 per month towards various loans. He hastens to add that after payment of instalments, a sum of R.2500.00 per month used to be his carry home salary. These facts stand discredited by loan application Ex.MW2/24, which projects a different story. This application was moved by the claimant to the bank on 22.06.1998, wherein he details that his gross salary was Rs.8593.59 and after deductions, his carry home salary was Rs.3031.75. Deductions detailed by the claimant in the aforesaid application pertains to loans/advances taken from the bank. When his loans liability of Rs.11000.00 per months towards loans obtained from various societies is to be adjusted he was unable to pay even 40% of that loan out of his carry home salary. There would not be even a Single penny left with him to run his kitchen. Therefore, it is obvious that borrowings of the claimant in the year 1998 were excessive. The bank had been able to bring it over the record that the claimant incurred excessive indebtedness, which was beyond his means of repayment.

34. Much hue and cry has been made that in case his overdraft facility would have been renewed, he would have discharged his liabilities towards other agencies. This cry is in wilderness. If the bank would have renewed his demand loan facilities, in that situation instalments towards that facility would make his carry home salary negligible. How he would have adjusted his liabilities towards other agencies and run his kitchen are not brought over record by the claimant. It is obvious that the claimant had incurred debts which were not only considered excessive by the bank but in reality were excessive to his repaying capacity. He committed minor misconduct under clause (I) of para 521 (6) of the Shastry Award for such minor misconduct, punishment of warning/censure, recording of adverse remark or stoppage of one increment for a period not longer than six months can be imposed on the claimant.

35. At the cost of repetition, it is pointed out that the claimant admits that his liabilities towards payment of loans taken from various societies was Rs.11000.00 in the year 1998. When he availed advance of Rs.80,000.00 from the bank for kaan chedan ceremony of his daughter, application Ex.MW2/24 was moved by him on 22.06.1998. In column No.10, he details his direct liability to the bank. However, he conceals his direct liabilities from outside agencies in the application. His indirect liabilities with the bank and other outside agencies were not at all projected by him in column No.10 of the application. On this mis-representation of facts in loan application, which is Ex.MW2/24, the bank sanctioned advance of Rs.80,000.00 in favour of the claimant. Therefore, it is emerging that facts were misrepresented by the claimant, when aforesaid advance of Rs.80,000.00 was obtained by him.

36. He availed loans from outside agencies and became co-obligant too in respect of Shri Satender Pal Singh and Shri Netran without prior permission from the competent authority. The claimant violated guidelines stipulated in circular No.234/93/BC, which amounts to misconduct within clause 19.5(e) of the first Bipartite Settlement dated 19.10.1996. However, charge sheet Ex.MW2/1 stipulated that the claimant committed gross misconduct of doing an act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss. When separate misconduct has been coined for disobedience of any reasonable orders of the bank or superiors, then for that act the bank cannot claim that the claimant did acts prejudicial to its interest or it was an act of gross negligence likely to involve the bank in serious loss. In such a situation, it crystallizes that for violation of the aforesaid circular, the bank had not served charge sheet on the claimant. Resultantly, the Tribunal would not forge a new case for the bank and hold the claimant accountable for the same.

37. As unfolded by Shri Ashok Kumar, demand drafts L 740395 dated 23.05.2000 for Rs. 49000.00 and DD No.DL 740399 dated 23.05.2000 for a sum of Rs.40775.00, issued by State Bank of Patiala, Karnal, in favour of manager of the bank, to be credited to the salary account No.70526 of the claimant were deposited on the strength of pay in slip Ex, WW2/29 and Ex. WW2/31 respectively. Those demand

drafts are proved as Ex. WW2/28 and Ex. WW2/30 respectively. Shri Ashok Kumar declares that the bank had not forwarded any application for taking loan by the claimant nor issued any no objection certificate in that regard. The bank called for details from the claimant *vide* letter 24.05.2000 and in reply submitted on 13.06.2000, he disclosed to have he availed loan from Gharonda Nationalized Bank Employees Salary Earners Co-operative Thrift and Credit Societies, Karnal. He projects therein that the bank was not involved in any manner in that loan. The bank sought verification of details, *vide* letter dated 16.06.2000. The society responded, *vide* its letter dated 27.06.2000 The society also made a request for return of the above drafts purchased by them for loan proceeds of loan availed by the claimant. On 26.06.2000, Shri M.P. Vishwanathan was deputed for verification of documents/loan application. He reported that the loan application was executed in blank and seal of the bank was affixed on two pages of the documents, with signatures and No.9554 B was written below the signatures. Shri Ashok Kumar explains that the said signature number was allotted to him at the relevant time. He had not issued any no objection certificate or signed loan application either on behalf of the bank or in his personal capacity. He wrote letter Ex.MW2/43 to the bank in that regard. Factum of availing loan from above society is not a matter of dispute. Claimant concedes that loan application was moved, which was granted without any security/guarantee. Deposit of aforesaid two drafts with the bank is also an admitted fact.

38. It came to light that the claimant moved an application for loan to Gharonda Nationalized Bank Employees Salary Earners Co-operative Thrift and Credit Societies, Karnal, on 24.05.2000. His claim has been that the loan application was granted by the society, without any security/guarantee. Question arises as to whether any financial institution would consider such an application for loan, without being supported by any documents? An ordinary prudent man would respond that such an application would be summarily rejected, if it is not supported by any documentary evidence or security or guarantee from a third party. It is case of the claimant that none stood guarantee for that loan. It is not his case that the bank issued no objection certificate in his favour for seeking loan. He nowhere projects that salary certificate was issued by the bank, to support his application for loan. These circumstances make it apparent that the claimant fabricated a story in that regard. Shri Ashok Kumar details that Shri Vishwanathan submitted his report Ex. WW2/42 unfolding therein that the loan application was executed in blank and seal of the bank was affixed on two pages, with signatures underneath which No.9554B was written. Shri Vishwanathan entered the witness box to give reaffirmation to facts unfolded by Shri Ashok Kumar. He presents that he visited office of the society on 26.06.2000 and met Shri Komal Prakash. Shri Prakash showed loan application of the applicant, executed in blank over which seal of the bank was affixed on two pages with signatures underneath which No.9554B was written. His report Ex.MW2/42 details those very facts.

39. Basic question, which needs consideration, is whether Shri M.P. Vishwanathan and Shri Ashok Kumar are to be relied? Claimant dispels theory of animosity between him and Shri M.P. Vishwanathan, not to talk of projecting -history of ill will between the two. The claimant nowhere alleged that Shri Vishwanathan had motives to depose facts against him. No evidence worth name was brought over the record to probabalize that Shri Vishwsanathan and Shri Ashok Kumar were not worthy of credence. These two witnesses stood rigors of cross examination and fared well. Facts unfolded by them were found to be in consonance with ordinary human behaviour and natural course of events. Their depositions remained intact and above board. Intrinsic worth of their evidence remained unassailed. Considering the facts in entirely, I am of the considered opinion that Shri Vishwanathan and Shri Ashok Kumar are reliable witnesses.

40. Out of facts testified by Shri Vishwanathan, which get reaffirmation through his report Ex.MW2/42, it came to light that he visited office of the society on 26.06.2000. He met Shri Komal Prakash, who told him that the claimant had obtained loan of Rs.1 lakh from the said society. This proposition is not disputed by the claimant. Shri Vishwanathan details in Ex.MW2/42 that the loan application was executed in blank and bank's seal was affixed on two pages with signatures and No.9554B was written beneath the signatures. Shri Ashok Kumar declares that the said signature number was allotted to him at the relevant time and he never signed loan application of the claimant either in personal capacity or in official capacity. Consequently, it is evident that ocular evidence detailed by Shri Vishwanathan, relating to the contents of the loan application, are relevant and admissible, in the light of the facts that the said application was in possession of the claimant and he had withheld it intentionally. When these ocular facts are appreciated, it stood established that the loan application was executed in blank by the claimant over which seal of the bank was affixed , besides, forged signature of Shri Ahok Kumar and No.9554B was also written beneath his forged signatures.

41. Admittedly, the claimant availed medical leave from 22.06.2000 to 27.06.2000. His leave application as well as medical certificates are proved as Ex.MW2/34 to Ex.MW2/38. Claimant visited office of the society on 27.06.2000. He adjusted the loan, closed the account and obtained original documents from the Secretary of the Society. He presented certificate Ex.WW2/40 to the bank. This certificate was issued by the Society on 27.06.2000, detailing therein that the loan granted to the claimant stood adjusted and nothing was due from him. All loan documents, in original, were

returned to the claimant, which were produced by him at the time of raising loan. Thus, it is emerging over the record that hurriedly the claimant approached the society, adjusted the loan and obtained all documents, in original, from the society. He files certificate Ex.MW2/40, but withholds original loan documents.

42. Theory of loss of those documents, during travel in a public transport bus,. has been projected by the claimant. Surprisingly, certificate Ex.MW2/40 was not lost. He wants this Tribunal to believe that this certificate was kept separately while loan documents were kept in a bag, which was lost on the way. He presents, in his written statement for that the society did not return his application for membership and application for Ioan. However, different case was projected by him in his letter Ex.WW1/2, written to the bank on 10.11.2000. In that letter, he admits that after closing the loan account, he obtained back original documents only to produce the same before the bank to call the allegation a bluff, that too with good intention. Therefore, in Ex. WW1/2 an admission has been made by the claimant to the effect that he obtained all loan documents from the society with a view to confront the bank authorities to specify that seal of the bank with signature and No.9554B was not there on his loan application. Certificate Ex.MW2/40 confirms that all loans documents in original has been returned to the claimant. It would not be expected from an ordinary prudent man that he would keep certificate Ex.MW2/40 separately from other documents. Therefore, his story of loss of those documents in a public transport bus on his inward journey is not probable. It emerges that the loan documents were intentionally withheld by the claimant.

43. Would it lie in the mouth of the claimant to assert that by adjustment of loan, he had not made the bank to suffer any loss or to cause prejudice in any manner? By the entire episode, it emerges that the claimant does not maintain integrity and honesty in his dealings with outside agencies, when he availed loans from them and issued cheques to discharge his liabilities. He went on forging the documents, with a view to serve his interest. The claimant represents employees of the bank, when he deals with outside agencies. His actions are perceived as actions of employees of the bank in general. When such a picture is painted, it certainly shakes confidence of common populace in banking system. An employee who commits forgery is a black sheep, in whom the employer cannot repose any confidence. He would bring disrepute to the institution, where he is employed. Factum of his being on the rolls of the bank would deface image of the bank also. Consequently, it is evident that by his acts and conduct, claimant committed gross misconduct and did acts prejudicial to the interest of the bank.

44. What should be the appropriate punishment, which can be awarded to the claimant, is a proposition which would be addressed to by this Tribunal? Right of an employer to inflict punishment of discharge or dismissal is not unfettered. The punishment imposed must commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of section 11-A of the Industrial Disputes Act, 1947 (in short the Act), it was not open to the industrial adjudicator to vary the order of punishment on finding that the order of dismissal was too severe and was not commiserative with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. Apex Court, in this connection, had, however, laid down in Bengal Bhatdee Coal Company [1963 (I) LLJ 291] that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal or discharge. But by enacting the provisions of section 11-A of the Act the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicator. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to impose certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

45. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in Hind Construction and Engineering Company Ltd. [1965 (I) LLJ 462]. Likewise in Management of the Federation of Indian Chambers of Commerce and Industry [1971 (II) LLJ 630] the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In Ram Kishan [1996 (I) LLJ 982] the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and

disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, "when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straight-jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts".

46. In B.M. Patil [1996 (II) LLJ 536], Justice Mohan Kumar of Karnataka High Court observed that in exercise of discretion, the Disciplinary Authority should not act like a robot and justice should be moulded with humanism and understanding. It has to assess each case on its own merit and each set of fact should be decided with reference to the evidence recording the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and disproportionate to the act of misconduct.

47. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer commensurate with the gravity of the act of misconduct. If it comes to the conclusion the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in Sanatak Singh (1984 Lab.I.C.817). The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the precedent in Kachraji Motiji Parmar [1994 (II) LLJ 332]. Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, section 11A of the Act specifically gives two folds powers to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

48. In Bharat Heavy Electricals Ltd. [2005 (2) S.C.C. 481] the Apex Court was confronted with the proposition as to whether power available to the Industrial Tribunal under section 11-A of the Act are unlimited. The Court opined that "there is no such thing as unlimited jurisdiction vested with any judicial or quasi judicial forum and unfettered discretion is sworn enemy of the constitutional guarantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority, be it administrative or judicial, has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof". The Apex Court relied its judgement in C.M.C. Hospital Employees Union [1987 (4) S.C.C. 691] wherein it was held that "section 11-A cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under section 11-A of the Act has to be exercised judiciously and the Industrial Tribunal or Labour Court is expected to interfere with the decision of a management under section 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workmen concerned. The Industrial Tribunal or Labour Court has to give reasons for its decision". In Hombe Gowda Educational Trust [(2006 (1) S.C.C. 430) the Apex Court announced that the Tribunal would not normally interfere with the quantum of punishment imposed by the employer unless an appropriate case is made out therefore.

49. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untrammeled power. This power has to be exercised only Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Furthermore, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference can be made to the precedent in Bhagirath Mal Rainwa [1995 (I) LLJ 960].

50. Question for consideration comes as to whether punishment awarded to the claimant was shockingly disproportionate to his misconduct, justifying interference

by this Tribunal? In Firestone Tyre and Rubber Company of India (Pvt.) Ltd. [1973 (1) S.C.C. 813], the Apex Court ruled that once misconduct is proved, the Tribunal had to sustain order of punishment unless it was harsh indicating victimization. It has been further laid therein that if a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though now empowered to differ from the conclusion arrived at by the management, will have to give very cogent reasons for not accepting the view of the employer. Again in Divisional Controller K.S.R.T.C. (N.W.K.R.T.C) [2005 (3) S.C.C. 254] it was laid that question of quantum of punishment would not be weighed on amount of money misappropriated but it should be based on loss of confidence, which is a primary factor to be taken into account. Once a person is found guilty of misappropriating his employer's fund, there is nothing wrong for the employer to lose confidence or faith in such a person, awarding punishment of dismissal.

51. Whether punishment of compulsory retirement from service commensurate to the misconduct of the claimant? An employee who forges documents in order to serve his interest cannot be expected to render efficient and honest services to his employer as well as the public at large. One who commits offence with a view to axe his grind, may go to any extent in dealing with money of public. His dishonest intention may persuade him to embezzle money of customers also. For such an employee, employer is not expected to repose confidence and faith. Therefore, such an employee cannot claim to be retained in service. Claimant was compulsorily retired from service of the bank. It does not cast any stigma on him. He may avail future employment with others. His right to get retiral benefits are also not marred.

52. These facts make it apparent that punishment of compulsory retirement commensurate to the misconduct of the claimant. No evidence worth name has been highlighted to show that he has been victimized or bank had *mala fide* intention or followed unfair labour practice. Whether the penalty of compulsory retirement from service would relate back to the date of order of dismissal passed by the bank for an answer, it is expedient to consider the precedents handed down by the Apex Court. In Ranipur Colliery [(1959) Supp. 2 SCR 719] the employer conduct a domestic enquiry though defective and passed an order of dismissal and moved the Tribunal for approval of that order. It was ruled therein that if the enquiry is not defective, the Tribunal has only to see whether there was a *prima facie* case for dismissal and whether the employer had come to the *bona fide* conclusion that the employee was guilty of misconduct. Thereafter on coming to that conclusion that the employer had *bona fide* come to the conclusion that the employee was guilty, that is, there was no unfair labour practice and no victimization, the Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If the enquiry is defective for any reason, the Tribunal would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However on coming to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified its approval of the order of dismissal made by the employer on defective enquiry would still relate back to the date when order was made.

53. In Phulbari Tea Estate [1960 (I) S.C.R. 32] the domestic enquiry held by the employer culminating in the order of dismissal was found to be invalid, being in gross violation of the rules of natural justice. Even before the Tribunal, the employer did not lead proper evidence to justify the order of dismissal and contended itself by merely producing the statement of certain witnesses recorded during the domestic enquiry and the workman had no opportunity to cross-examine the witnesses before the Tribunal. In the absence of any evidence before it, justifying the dismissal, the Tribunal set aside the order of dismissal and granted compensation in lieu of reinstatement, which order was upheld by the Apex Court. In that case question of relating back of the order of dismissal did not arise.

54. In P.H. Kalyani [1963 (1) LLJ 673] the employer dismissed the workman after holding a domestic enquiry into the charges. Since some dispute was pending before the Industrial Tribunal, the employer applied for "approval" of action of dismissal in compliance with the proviso' to section 33(2)(b) of the Act. The workman made an application under section 33-A of the Act. Apart from relying on validity of domestic enquiry, the employer adduced all the evidence before the Tribunal in support of its action. On basis of evidence before it, the Tribunal came to the conclusion that the facts of misconduct committed by the workman were of serious nature involving danger to human life and therefore dismissed the application under section 33-A and accorded "approval" to the action of dismissal taken by the employer. In this situation the Apex Court held that if the enquiry is not defective and the action of the employer is *bona fide,* the tribunal will grant the approval" and the dismissal would "relate back to the date from which the employer had ordered dismissal", If the enquiry is invalid for any reason. The Tribunal will have to consider for itself on the evidence adduced before whether the dismissal was justified. If it comes to the conclusion on its own a praisal of such evidence that the dismissal was justified, the dismissal would "still relate back to the date when the order was made". Sasa Musa Sugar Works case (supra) was distinguished saying that observations made therein "apply only to a case where the employer had neither dismissed the employee nor had come to the conclusion that a case for dismissal had been made. In that case, the dismissal of the employee takes effect from the date of the award and so untill then the relation of employer and employee will continue in law and in fact".

55. D.C. Roy [(1976) Lab. I.C. 1142] is the illustration where domestic enquiry held by the employer was found to be invalid being violative of principles of natural justice and the employer had justified the order of dismissal by leading evidence before the Labour Court, on appraisal of which the Labour Court found the order of dismissal justified. In appeal, the Apex Court upheld the award with the observation that "the ratio of Kalyani's case (supra) would therefore, govern the case and the judgment of the Labour Court must relate back to the date on which the order of dismissal was passed".

56. In Gujrat Steel Tubes Ltd. [1980 (1) LLJ 137] inverted image of the D.C. Roy's case was presented by a majority of three judge bench wherein it was held that "where no enquiry has preceded punitive discharge, and the Tribunal for the first time upholds the punishment, this court in D.C. Roy vs. Presiding Officer (supra) has taken the view that full wages be paid untill the date of the award. There cannot be any relation back of the date of dismissal when the management passed the void order". Though the court ruled that law laid in D.C. Roy is correct yet it followed obiter instead of the decision. Observations of the Apex Court in above decision, bearing on the relate back rule, were faulted in R.Thiruvirkolam [1997 (1) SCC 9] on the ground that they "are not in the line with the decision in Kalyani which was binding or with D.C. Roy to which learned Judge Krishna lyer J. was a party. It also does not match with the juristic principle discussed in Wade". The view taken in R.Thiruvirkolam (supra) was affirmed in Punjab Dairy Development Corporation Ltd. [1997 (2) LLJ 1041].

57. In view of the catena of decisions, detailed above, it is clear that an employer can justify its action by leading evidence before the Tribunal. This equally applies to cases of total absence of enquiry and defective enquiry. A case of defective enquiry stands on the same footing as no enquiry. If no evidence is led or evidence adduced does not justify the dismissal by the employer, the Tribunal can order reinstatement or payment of compensation as it may think fit. But if it finds on the evidence adduced before it that the dismissal is justified, the doctrine of relate back is pressed into service to bridge the time gap between the rupture of the relationship of employer and employee and the finding of the Tribunal.

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59. If the workman is to be paid wages upto the date of the award of the Tribunal, the Parliament has to enact so, declares the Delhi High Court in Ranjit Singh Tomar (ILR 1983 Delhi 802). Obviously the Act does not make any provision for the situation. Precedents in Ghanshyam Das Shrivastava [1973 (1) SCC 656], Capt. M. Paul Anthony [1999 (3) SCC 679] and South Bengal State Transport Corporation [2006 (2) SCC 584] nowhere deal with the controversy, hence are not discussed.

60. In view of the above law, it is ordered that the punishment of compulsory retirement from service will relate back to the date when the bank awarded that punishment to the claimant. Award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 28.02.2013 DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 19 मार्च 2013

का॰आ॰ 882.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या 236/2011) को प्रकाशित करती है, जो कंन्द्रीय सरकार को 19.03.2013 को प्राप्त हुआ था।

[सं॰ एल-12012/03/2011-आई आर (बी-I]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 19th March, 2013

S.O. 882.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 236/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, New Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of Hyderabad and their workmen, received by the Central Government on 19/03/2013.

[No. L-12012/03/2011-IR(B-I]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 236/2011

Shri Subodh Narayan Jha,
RZF-30/57, Dabri Extn.
East, Janakpuri,
New Delhi - 110045. Workman...

Versus

The General Manager,
State Bank of Hyderabad,
Scope Complex, Lodhi Road,
New Delhi-110003. Manager.....

AWARD

A clerk/typist posted at Scope Complex branch of State Bank of Hyderabad (in short the bank) resorted to outside borrowings without prior permission from the competent authority and forged signatures of bank officials on undertaking-cum-no-objection certificate, submitted to various Thrift and Credit Co-operative Societies. He availed loan of Rs.1 Lakh from Nationalized Bank Employees (SE) Co-operative NA Thrift and Credit Society, Rs.50,000.00 from Public Sector Bank Employees Co-operative Thrift and Credit Society Rohtak, Rs.50,000.00 from Commercial Bank Employees Co-operative Thrift and Credit Society, Rohtak and Rs.80,000.00 from PNB Employees Thrift and Credit Society Ltd., Ghaziabad, U.P.

2. When these borrowings and forgery came to light, he was placed under suspension on 07.12.2006. Charge sheet dated 07.05.2007 was served upon him. Statement of defence dated 05.06.2007, submitted by him, was not found to be satisfactory. A departmental enquiry was constituted. Shri S.K. Acharya was appointed as Enquiry Officer by the bank. On conclusion of the enquiry, Shri Acharyia submitted his report dated 06.08.2007 to the Disciplinary Authority. Disciplinary Authority concurred with the findings of the Enquiry Officer and awarded punishment of discharge from service of the bank with superannuation benefits, *vide* order dated 11.01.2008. Aggrieved by the order, the clerk/typist raised a demand for reinstatement in service. When his demand was not conceded to, he raised an industrial dispute before the Conciliation Officer, Since the bank contested his claim, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No. L-12012/03/2011-1R(B-1), New Delhi dated 02.06.2011 with following terms.

> "Whether action of the management of State Bank of Hyderabad in imposing penalty of discharge from service and with superannuation benefits upon Shri Subodh Narayan Jha, ex-Clerk *vide* their order dated 11.01.2008 is legal and justified? To what relief the workman is entitled?

3. Claim statement was filed by the clerk/typist, namely, Shri Subodh Narayan Jha pleading that he was appointed as clerk by the bank on 01.10.1997. His salary was Rs.3450.00 per month. He was transferred to KG Marg branch of the bank in January 1998, from where he was transferred to Scope Complex Branch, Lodhi Road, New Delhi. Since his father was ailing, he had to take loans for his treatment. Loan of Rs.1 lakh was taken by him from Nationalized Bank Employees (SE) Co-operative NA Thrift and Credit Society on 17.03.2006. He took another loan of Rs.50,000.00 from Commercial Bank Employees Cooperative Thrift and Credit Society, Rohtak on 13.11.2006. Since his father was a cardiac patient, he was compelled to take another loan of Rs.80,000.00 from Public Sector Bank Employees Co-operative Thrift and Credit Society Rohtak. Yet another loan of Rs.80,000.00 was taken by him on 07.01.2005 from PNB employees Thrift and Credit Society Ltd., Ghaziabad, U.P. All the above loans were taken by him due to ailment of his father. He was chargesheeted by the bank and enquiry was conducted. Enquiry was a sham. Enquiry Officer committed gross violation of principles of natural justice. Finding was recorded against him, holding him guilty of the charges. His services were terminated on 20.06.2008. Charge of borrowing money from outside sources does not fall in the category of misconduct, not to talk of gross misconduct. He had borrowed funds from different societies in a hurry to save life of his father. He had not forged signatures of any officer nor any forgery was within his knowledge. He had submitted his papers to an agent, who fraudulently obtained his signatures. It was the agent who had committed fraud. Neither report of handwriting expert was produced nor proper enquiry was conducted to substantiate act of fraud against him. He had caused no loss to the bank. Sole charge of not taking approval from the bank authorities would project that punishment disproportionate to his misconduct was awarded. He claims that punishment awarded to him was too harsh to sustain. His good length of unblemished service was not take into consideration while awarding punishment to him. He claims reinstatement in service with continuity and full back wages.

4. Demurral was made by the bank pleading that the claimant obtained various loans from outside agencies without prior approval/permission from the competent authority. He also submitted forged declaration while seeking loans from outside agencies. He produced letter of undertaking containing forged signatures with SS No.7650. No officer with SS No.7650 was there in the bank at the relevant time. He also furnished false declaration to outside agencies, stating therein that he had not availed loan from any other society. Those loans were taken by the claimant

from outside agencies in violation of rules and regulations governing his service conditions.

5. The bank presents that when factum of his availing loan from various outside agencies came to light, he was placed under suspension. Charge sheet was served upon him. He submitted his statement of defence which was not found to be satisfactory. An enquiry was constituted against him. Enquiry Officer conducted enquiry in accordance with the principles of natural justice. Opportunity was given to him to defend himself. Enquiry was conducted in a fair and proper manner. Disciplinary Authority concurred with the findings of the Enquiry Officer and awarded punishment of discharge from service with superannuation benefits.

6. Claim projected by the claimant that forgery was committed by an agent is unfounded. He committed fraud, forged signatures of officers of the bank and gave wrong declaration to outside agencies to the effect that he had not borrowed any money from any other co-operative society. Misconduct committed by him is so alarming that it led the bank to lose confidence in him. Punishment awarded to the claimant commensurate to his misconduct. Action of the bank is legal and justified. Claim for reinstatement in service is untenable, hence, it may be dismissed.

7. On pleading of the parties, following issues were settled:

(1) Whether enquiry conducted by the management is just, fair and proper?

(2) Whether punishment awarded to the claimant is proportional to the misconduct?

(3) As in terms of reference.

8. Issue relating to virus of enquiry was treated as preliminary issue. Claimant opted not to adduce any evidence on the preliminary issue. On consideration of affidavit of Shri P.C. Das, tendered as evidence and submissions by the parties, preliminary issue was answered in favour of the claimant and against the bank *vide* order dated 13.01.2012.

9. The bank examined Shri Satish Ahlawat to prove misconduct of the claimant. Claimant opted not to adduce any evidence in rebuttal.

10. Arguments were heard at the bar. Shri Pramod Kumar, authorized representative, advanced arguments on behalf of the bank. The claimant abstained away from the proceedings and opted not to advance any arguments. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

Issue No.2

11. Shri Ahlawat swears in his affidavit, Ex. MW1/A, tendered as evidence, that the claimant was working as clerk/typist with Scope Complex, Lodhi Road Branch, of the bank, when he obtained various loans from outside agencies without approval/permission from the competent authority. He submitted forged declaration while obtaining loans. He submitted fake irrevocable letter of undertaking to Nationalized Bank Employees (SC) Co-operative Thrift and Credit Society, Rohtak purported to have been signed by an officer with SS No.7650. There was no such officer in the Bank with SS No.7650 during the relevant time. Therefore, irrevocable letter of undertaking was forged one. The claimant had also submitted false declaration to the societies stating therein that he had not availed any loan from any other society. Claimant had also obtained loans from Commercial Bank Employees Co-operative Urban SC Thrift and Credit Society Ltd., PNB Employees (SC) Thrift and Credit Society, Ghaziabad, UP and Public Sector Bank Employees Co-operative (SC) Thrift and Credit Society Ltd., Rohtak. The above loans were obtained by him in violation of services conditions by which he was governed. When an employee of doubtful integrity and dishonest nature is in the service of the bank, it causes great injustice and irreparable loss to the bank, where public money is involved.

12. During course of cross examination, Shri Ahlawat unfolds that after going through documents Ex. MW1/9, Ex. MW1/12, Ex. MW1/W1, Ex. MW1/W2, Ex. MW1/W3, Ex. MW1/W4, Ex. MW1/W5, Ex. MW1/W6 and Ex. MW1/13, he came to know that the claimant had given undertakings to the societies referred above. He had mentioned SS No.7650 and SS No. 5330 on undertaking while SS No.7650 was not allotted to any officer. Officer to whom SS No. 5330 was allotted had not issued any certificate in favour of the claimant. Thus, it emerges that the above two certificates/undertaking were forged by him.

13. When facts unfolded by Shri Ahlawat are scanned alongwith documents proved by him, it emerged that the claimant had obtained loans from various Cooperative Thrift and Credit Societies, *viz.* Nationalized Bank Employees (SE) Cooperative NA Thrift and Credit Society, Public Sector Bank Employees Cooperative Thrift and Credit Society Rohtak, Commercial Bank Employees Cooperative Thrift and Credit Society, Rohtak and PNB Employees Thrift and Credit Society Ltd., Ghaziabad, U.P. In his statement of defence, which has been proved as Ex. MW1/3, claimant nowhere disputes factum of availing loans from the aforesaid societies. He projects that taking loans from co-operative societies does not require prior permission from the competent authority. Consequently, out of facts unfolded by Shri Ahlawat and those conceded by the claimant in Ex. MW1/3, it stood established that the claimant obtained loans from the aforesaid four co-operative

societies without obtaining prior permission from the competent authority.

14. Shri Ahlawat announces that the claimant gave an undertaking to Nationalized Bank Employees (SE) Co-operative NA Thrift and Credit Society , Rohtak, which is Ex.MW1/9. When this document is scanned, it came to light that an irrevocable letter of undertaking was furnished to the aforesaid society besides a certificate to the effect that no disciplinary proceedings were pending against the claimant. Ex.MW1/9 purports to have been signed by an Assistant General Manger, whose specimen signatures were given number SS No. 7650. Ex.MW1/WD1 was also proved by Shri Ahlawat wherein claimant purportedly authorized the bank to deduct amount of instalment from his salary/subsistence allowance and remit that amount to the aforesaid society towards loan of Rs.1 lakh. Shri Ahlawat testified that SS No.7650 was not allotted to any officer of the bank. Therefore, out of facts unfolded by Shri Ahlawat and contents of Ex.MW1/9 it stood established that the claimant fabricated the document and tendered it to the aforesaid society when a loan of Rs.1 lakh was avaled. Ex.MW1/VV6 was proved by Shri Ahlawat, which is an irrevocable letter of undertaking furnished by the claimant to Public Sector Bank Urban (SE) Thrift and Credit Society, Rohtak when he availed loan of Rs.50000.00 from the said society. While moving application for loan, he furnished documents, Ex.MW1/W2, purported to have been issued by a Manager having SS No.5330. Shri Ahlawat testified Ex.MW1/W2 was not issued by the officer to whom SS No.5330 was allotted. Consequently, facts unfolded by Shri Ahlawat bring it over record that the claimant forged Ex.MW1/W2 and tendered it to the Commercial Bank Employees Co-operative Thrift and Credit Society, Rohtak, when he availed loan of Rs.50000.00 from the said society.

15. Much hue and cry was made by the claimant to this effect that obtaining loans from co-operative societies without prior permission from the competent authority does not amount to any misconduct. His contention has substance in that regard. Clause 19.7 of Bipartite Settlement dated 10.04.2002 coins a minor misconduct of incurring debts to the extent considered by the management as excessive. Employee is not constrained to obtain prior permission from the competent authority when he avails loans, no matter such loan is obtained by him from his employer or an outside agency. He commits minor misconduct when he incurs debts, which is considered excessive by his employer. Consequently, it is evident that for incurring debts from a co-operative society. The claimant was not under obligation to obtain prior permission from the bank.

16. As proved above, claimed forged Ex.MW1/9 and Ex.MW1/W2 when he obtained loans from Nationalized Bank Employees (SE) Co-operative NA Thrift and Credit Society, Public Sector Bank Employees Co-operative Thrift and Credit Society Rohtak, Commercial Bank Employees Co-operative Thrift and Credit Society, Rohtak and PNB employees Thrift and Credit Society Ltd., Ghaziabad, UP. Forged documents Ex.MW1/9 and Ex.MW1/W2 have been brought over record. Claimant tried to explain that these documents were forged by the Agents of the aforesaid societies . He failed even to name that agent who had allegedly forged aforesaid documents. On the other hand, he was beneficiary of the loans. His signatures do appear on the above documents. He failed to explain as to how he handed over these two documents to an agent, leaving the columns blank. Therefore, it is evident that explanation offered by the claimant in that regard is farther from truth. It was the claimant who forged these documents and used the same as genuine, knowing it to be forged one. By producing these two forged documents, he made aforesaid societies to grant loan in his favour Therefore, it stood established that acts of forgery and cheating were committed by the claimant.

17. When an employee of a bank commits acts of cheating and fraud and obtains loans from outside agencies, he puts reputation of his employer to stake. By such an act, the employee degrades himself in the eyes of the public at large and ridicules position of his employer. Consequently, it is evident that such an act is prejudicial to the interest of his employer. Doing an act prejudicial to the interest of the bank has been coined as a 'major misconduct' under clause 19.5(j) of the Bipartite Settlement dated 10.04.2002. Taking into account all these facts, it is concluded that the bank has been able to establish that gross misconduct was committed by the claimant when he forged aforesaid two documents, used the same as genuine ones and availed loans from the aforesaid societies.

18. Question for consideration comes as to whether there are any justifications for punishment of dismissal? Right of an employer to inflict punishment of discharge or dismissal is not unfettered. The punishment imposed must be commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of section 11-A of the Act, it was not open to the industrial adjudicator to vary the order of punishment on finding that the order of dismissal was too severe and was not commensurate with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. Apex Court, in this connection, had, however, laid down in Bengal Bhatdee Coal Company [1963(1) LLJ 291] that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal or discharge. But by enacting the provisions of section 11-A of the Act, the Legislature has transferred the

discretion of the employer, in imposing punishment, to the industrial adjudicator. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to imposed certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

19. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in Hind Construction and Engineering Company Labour [1965 (1) LLJ 462]. Likewise in Management of the Federation of Indian Chambers of Commerce and Industry [1971 (II) LLJ 630] the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In Ram Kishan [1996 (1) LLJ 982] the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, "when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straight- jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts".

20. In B.M.Patil [1996 (11)LLJ 536], Justice Mohan Kumar of Karnataka High court observed that in exercise of discretion, the disciplinary authority should not act like a robot and justice should be moulded with humanism and understanding. It was assess each case on its own merit and each set of fact should be decided with reference to the evidence recording the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was to harsh and disproportionate to the act of misconduct.

21. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer commensurates with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved , it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in Sanatak Singh (1984 Lab. I.C.817). The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the precedent in Kachraji Motiji Parmar [1994 (II) LLJ 332]. Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge of dismissal is not justified. On facts and in the circumstances of a case, Section 11A of the Act specifically gives two folds powers to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

22. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untramaled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency omitted by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Furthermore, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of

grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference cannot be made to the precedent in Bhagirath Mal Rainwa [1995 (1) LLJ 960].

23. In the light of above legal propositions, it would be considered as to whether punishment awarded to the claimant commensurate to his misconduct? As projected above, the claimant availed loans from various societies referred above, without prior permission from the competent authority. He forged signatures with S.S.No. 7650 on an irrevokable letter of undertaking given to the Nationalised Bank Employees (S.E.) Co-operative N.A. Thrift and Credit Society, Rohtak. He also forged document Ex.MW1/W2, which purported to have been signed by an officer of the bank with S.S.No.5330. He gave that certificate alongwith loan application to the Commercial Bank Employees Co-operative Thrift and Credit Society, Rohtak. Forgery on these documents were not disputed by the claimant. He opted not to disclose his barrowings to the societies, when he availed loans from them. Thus it is evident that the claimant mis-represented facts before those societies and obtained loan by deception. He used forged docuemnts as genuine, konwing the some to be forged. All these facts bring it over the record that serious offences of forgery, cheating and using forged documents as genuine were committed by the claimant.

24. Forgery, cheating and using forged docuemnts as genuine are serious misconduct, besides being criminal offence. One who commits forgery and cheating makes position of his employer ridiculous. Such an employee not only hoodwinks his employer but customers also. He puts his employer's reputation to stake in its eyes of the customers as well as general public. The customer, who finds himself defrauded, is put to shock and agony. On the other hand the employer loose faith in such an employee. All these factors are sufficient to conclude that such an employee looses his right to continue in job.

25. Whether such employee should be awarded punishment of discharge simplicitier? Punishment of discharge simplicitier neither operates as stigma nor debars him from getting retrial benefits. Retrial benefits are given to an employee for efficient services rendered to the employer. One who defrauded the employer as well as the customer cannot be said to have rendered efficient service. Therefore such an employee cannot put a claim for retrial benefits. His debase act would make him to receive ultimate penalty. Therefore I am of the considered opinion that no case is made out to show that punishment awarded to the claimant was disproportionate to his misconduct, warranting interference by the Tribunal. No case of victimization, malafide or unfair labour practice has been put forward by the claimant, in the matter of award of punishment to him. All these reasons would make me to comment that punishment awarded to the claimant commensurate to his misconduct. Issue is, therefore, answered in favour of the bank and against the claimant.

ISSUE NO. 3

26. Not even an iota of evidence was brought over the record by the claimant to question legality of punishment awarded to him. When there is vacuum of evidence of malafide, arbitrariness, victimization and exercise of unfair labour practice on the part of the bank, it cannot be said that punishment awarded to the claimant was not justified. There cannot be any reason to inter-meddle with the punishment of discharge from service with superannuation benefits awarded to the claimant. Consequently it is announced that punishment of discharge from service with superannuation benefits awarded to the claimant vide order dated 11.01.2008 commensurate to his misconduct and withstand standards of legality as well as justifiability. No interference is called for in the punishment by this Tribunal.

27. Whether punishment of discharge from service with superannuation benefits would relate back to the date of order, passed by the bank? For an answer, it is expedient to consider the precedents handed down by the Apex Court. In Ranipur Colliery [(1959) Supp. 2 SCR 719] the employer conducted a domestic enquiry though defective and passed an order of dismissal and moved the Tribunal for approval of that order. It was ruled therein that if the enquiry is not defective, the Tribunal has only to see whether there was a *prima facie* case for dismissal and whether the employer had come to the bonafide conclusion that the employee was guilty of misconduct. Thereafter on coming to that conclusion that the employer had bonafide come to the conclusion that the employee was guilty, that is, there was no unfair labour practice and no victimization, the Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If the enquiry is defective for any reason, the Tribunal would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However on coming to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified its approval of the order of dismissal made by the employer on defective enquiry would still relate back to the date when order was made.

28. In Phulbari Tea Estate [1960 (I) S.C.R. 32] the domestic enquiry held by the employer culminating in the order of dismissal was found to be invalid, being in gross violation of the rules of natural justice. Even before the Tribunal, the employer did not lead proper evidence to justify the order of dismissal and contended itself by merely producing the statement of certain witnesses recorded during the domestic enquiry and the workman had no opportunity to cross- examine the witnesses before the Tribunal. In the absence of any evidence before it, justifying the dismissal, the Tribunal set aside the order of dismissal and granted compensation in lieu of reinstatement, which

order was upheld by the Apex Court. In that case question of relating back of the order of dismissal did not arise.

29. In P.H. Kalyani [1963 (1) LLJ 673] the employer dismissed the workman after holding a domestic enquiry into the charges. Since some dispute was pending before the Industrial Tribunal, the employer applied for "approval" of action of dismissal in compliance with the proviso to section 33(2)(b) of the Act. The workman made an application under section 33-A of the Act. Apart from relying on validity of domestic enquiry, the employer adduced all the evidence before the Tribunal in support of its action. On basis of evidence before it, the Tribunal came to the conclusion that the facts of misconduct committed by the workman were of serious nature involving danger to human life and therefore dismissed the application under section 33-A and accorded "approval" to the action of dismissal taken by the employer. In this situation the Apex Court held that if the enquiry is not defective and the action of the employer is bonafide, the Tribunal will grant the "approval" and the dismissal would "relate back to the date from which the employer had ordered dismissal". If the enquiry is invalid for any reason, the Tribunal will have to consider for itself on the evidence adduced before it, whether the dismissal was justified. If it comes to the conclusion on its own appraisal of such evidence that the dismissal was justified, the dismissal would "still relate back to the date when the order was made". Sasa Musa Sugar Works case (supra) was distinguished saying that observations made therein "apply only to a case where the employer had neither dismissed the employee nor had come to the conclusion that a case for dismissal had been made. In that case, the dismissal of the employee takes effect from the date of the award and so untill then the relation of employer and employee will continue in law and in fact".

30. D.C.Roy (1976 Lab. I.C. 1142) is the illustration where domestic enquiry held by the employer was found to be invalid being violative of principles of natural justice and the employer had justified the order of dismissal by leading evidence before the Labour Court, on appraisal of which the Labour Court found the order of dismissal justified. In appeal, the Apex Court upheld the award with the observation that "the ratio of Kalyani's case (supra) would therefore, govern the case and the judgment of the Labour Court must relate back to the date on which the order of dismissal was passed".

31. In Gujrat Steel Tubes Ltd. [1980 (1) LLJ 137] inverted image of the D.C. Roy's case was presented by a majority of three judge bench wherein it was held that "where no enquiry has preceded punitive discharge, and the Tribunal for the first time upholds the punishment, this court in D.C. Roy *vs.* Presiding Officer (supra) has taken the view that full wages be paid untill the date of the award. There cannot be any relation back of the date of dismissal when the management passed the void order". Though the court ruled that law laid in D.C.Roy is correct yet it followed obiter instead of the decision. Observations of the Apex Court in above decision, bearing on the relate back rule, were faulted in R.Thiruvirkolam [1997 (1) SCC 9] on the ground that they "are not in the line with the decision in Kalyani which was binding or with D.C. Roy to which learned Judge Krishna lyer J. was a party. It also does not match with the juristic principle discussed in Wade". The view taken in R.Thiruvirkolam (supra) was affirmed in Punjab Dairy Development Corporation Ltd. [1997 (2) LLJ 1041].

32. In view of the catena of decisions, detailed above, it is clear that an employer can justify its action by leading evidence before the Tribunal. This equally applies to cases of total absence of enquiry and defective enquiry. A case of defective enquiry stands on the same footing as no enquiry. If no evidence is led or evidence adduced does not justify the discharge from service by the employer, the Tribunal can order reinstatement or payment of compensation as it may think fit. But if it finds on the evidence adduced before it that the discharge from service is justified, the doctrine of relate back is pressed into service to bridge the time gap between the rupture of the relationship of employer and employee and the finding of the Tribunal.

33. If the workman is to be paid wages upto the date of the award of the Tribunal, the Parliament has to enact so, declares the Delhi High Court in Ranjit Singh Tomar (ILR 1983 Delhi 802). Obviously the Act does not make any provision for the situation. Precedents in Ghanshyam Das Shrivastava [1973 (1) SCC 656], Capt. M.Paul Anthony [1999 (3) SCC 679] and South Bengal State Transport Corporation [2006 (2) SCC 584] nowhere deal with the controversy, hence are not discussed.

34. In view of the above law, it is ordered that the order of discharge from service with superannuation benefits will relate back to the date when the bank passed order of discharge from service against the claimant. Claim put forward by Shri Subodh Narain Jha is liable to be brushed aside. Accordingly, his claim is dismissed. An award is passed in favour of the bank and against the claimant. It be sent to the appropriate Government for publication.

Dated 04.02.2013 Sd/-

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 20 मार्च 2013

का॰आ॰ 883.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी॰सी॰सी॰एल॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं॰ 1, धनबाद के पंचाट (संदर्भ संख्या 88/1999) को

प्रकाशित करती है, जो केंद्रीय सरकार को 20/03/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-20012/531/1998-आई आर (सी-I)]
एम॰के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 20th March, 2013

S.O. 883.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 88/1999) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 20/03/2013.

[No. L-20012/531/1998-IR(C-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1) DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A) OF I.D. ACT, 1947

Ref. No. 88 of 1999

Employers in relation to the management of Koyla Bhawan of M/S B.C.C.L.

and

Their workmen

Present	:	Sri Ranjan Kumar Saran, Presiding officer
Appearances	:	
For the Employers	:	None
For the Workman	:	Sri N.G. Arun, Rep.
State :-Jharkhand		Industry:- Coal.

Dated. 05/03/2013

AWARD

By Order No.L-20012/531/98-(C-I), dated 17/05/1999, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause(d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

''क्या वी॰सी॰सी॰एल॰ के प्रबंध तंत्र द्वारा सिद्धनाथ शुक्ल को समयपूर्व सेवानिवृत्त किया गया? यदि हॉ तो कर्मकार किस राहत के पात्र हैं?''

2. The case is received from the Ministry of Labour on 15.06.1999. Both parties are noticed. The Union files their written statement on 26.11.1999. And rejoinder filed by the Sponsoring Union on 12.06.2000. One witness on behalf of the management examined and one document has been marked as Ext. M-1.

3. Short point is to be decided in the reference is as to superannuation of the workman, taking his Date of Birth is 1935 is justified or not. The claim of the workman is his Date of Birth is 1.5.1938 not 1.5.1935. In this case from the side of the management one witness has been examined and one document Ext. M-1 marked.

4. The witness Sri Bipin Bihari Rai MW-1 says previously the workman was working at Eastern India Coal Company Ltd and thereafter joined in BCCL. The witness marked the relevant page of From "B" register Ext. M-1, Where Serial No. 32454, contains the name and Date of Birth of the workman. Where it is mentioned the Date of Birth of the workman was 1.5.1935.

5. The workman though filed some documents, has not proved the same not examined himself as a witness and not gave evidence to the effect that his Date of Birth is 1.5.1938. Therefore taking into the oral and documentary evidence filed by the workman came to the conclusion that the Date of Birth of the workman is 1.5.1935 not 1.5.1938.

6. Considering the facts and circumstance, I hold that the management superannuating, Sri Sidhnath Shukla in time is justified and the concerned workman is not entitled to any relief. The reference answered against the workman.

This is my award R.K. SARAN, Presiding Officer

नई दिल्ली, 20 मार्च 2013

का॰आ॰ 884.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी॰सी॰सी॰एल॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध ा में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं॰ 1, धनबाद के पंचाट (संदर्भ संख्या **75/2001**) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/03/2013 को प्राप्त हुआ था।

[फा॰ सं॰ एल-20012/604/2000-आई आर (सी-I)]
एम॰के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 20th March, 2013

S.O. 884.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 75/2001) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 20/03/2013.

[F. No. L-20012/604/2000-IR(C-I)]
M.K. SINGH, Ssection Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1) DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A) OF I.D. ACT, 1947

Ref. No. 75 of 2001

Employers in relation to the management of Pootki Balihari Colliery of M/S. B.C.C.L.

and

Their workmen

Present : Sri Ranjan Kumar Saran, Presiding officer

Appearances:

For the Employers : Sri D.K. Verma, Advocate

For the Workman : Sri M.M. Khan, Advocate

State:- Jharkhand Industry:- Coal.

Dated. 08/03/2013

AWARD

By Order No.L-20012/604/2000-(C-I), dated 16/03/2001, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause(d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Pootki Colliery of M/S BCCL in dismissing the service of Smt. Ramadana Devi, sweeper from the company *w.e.f.* 11.4.96 is justified? if not to what relief is the concerned workman entitled?"

1. The case is received from the Ministry of Labour on 03.04.2001 Both parties are noticed. The Union files their written statement on 06.09.2002. And rejoinder filed by the Sponsoring Union on 28.07.2003. The workman was a lady sweeper, working in BCCL, she has been dismissed from her service on the ground of habitual absentee unauthorisedly.

2. The concerned workman Smt. Ramdana Devi is already died on 18.8.2009. As such the substitution allowed in the name of his son Sri Shankar Bhuiya. As Sri Shankar Bhuia is the legal heirs of Late Smt. Ramdana Devi.

3. The domestic enquiry conducted by the management is accept by the Id. counsel for the workman in this case. And the acceptance petition of the Id. counsel of the workman is accept by the tribunal, it is held as fair and proper and the said order became final. The ground for dismissal is habitual absence. Her duty period is given below.

1992—172 days

1993—193 days

1994—96 days

4. If above is the period of workman duty as sweeper. The whole domestic enquiry proceeding is accepted as fair and proper by Id. counsel of the workman it means the habitual absence is accepted. As per Ext. MW-1 the duty period is only 96 days in 1994. the entire cleaning system will be collapsed.

5. It is argued by the workman, that the continuance absence ought not attract major penalty. But the nature of work always matters. If a sweepress, remains absent continuously, the management has not committed any error specially. When the domestic enquiry has been held as fair and proper.

6. considering the facts and circumstance, I hold that the action of the management of pootki colliery of M/s. BCCL in dismissing the service of late smt. Ramdana Devi, sweeper from the company *w.e.f.* 11.6.96 is justified and fair. Hence the son of the concerned workman is not entitled to any relief. Reference answered against the workman.

This is my award. R.K. SARAN, Presiding Officer

नई दिल्ली, 20 मार्च 2013

का॰आ॰ 885.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी॰सी॰सी॰एल॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध ा में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं॰ 1, धनबाद के पंचाट (संदर्भ संख्या 41/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/03/2013 को प्राप्त हुआ था।

[सं॰ एल-20012/49/2009-आई आर (सी-I)]
एम॰के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 20th March, 2013

S.O. 885.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 41/2009) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 20/03/2013.

[No. L-20012/49/2009-IR(C-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (N0. 1), DHANBAD.

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A) OF I.D. ACT, 1947.

REF. NO. 41 OF 2009

Employers in relation to the management of W.J. Area of M/S. B. C.C.L.

and

Their workmen.

Present	:	Sri Ranjan Kumar Saran, Presiding officer
Appearances	:	
For the Employers.	:	Sri D.K. Verma, Advocate
For the workman.	:	Sri C.K. Jha, Rep.
State	:	Jharkhand
Industry	:	Coal.

Dated. 04/03/2013

AWARD

By Order No. L-20012/49/2009-IR (CM-I), dated 09/07/2009, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Bhatdee Colliery of M/S. BCCL in not allowing Sri Raju Vishwakarma, M/Loader to resume his duty in the duty, company is legal and justified? (ii) To what relief is the concerned workan entitled?"

2. The case is received from the Ministry of Labour on 17.07.2009. After notice, both parties appeared, the workman/Union files their written statement on 05.03.2010. And the management files their written statement-cum-rejoinder on 27.01.2011. Evidence taken from both side on preliminary point regarding fairness of domestic enquiry and document marked.

3. The workman was not allowed to work *i.e.* refused to join as he was a habitual absentee from duty. After a departmental enquiry and after show cause the workman was removed. Here the preliminary enquiry conducted, it is observed that the domestic enquiry was fair and proper.

4. The main misconduct against the workman that he was a habitual absentee. His absentee statement is given below:

Year	Attendance
2000	112 days
2001	31 days
2002	82 days
2003	63 days

5. The question is save and except the absence he has not other misconduct. Definitely long absence will hamper the work of the management. The workman in his evidence has stated that he was unnecessarily detained in jail on false allegations for which he could not attend his duty.

6. Moreover the dupty personnel manager Bhatdee colliery recommended to allow the workman to join duty in following words which is quoted below:

> "In this particular case the accused workman has not found guilty by the Court. The pension contribution for the gap period is concerned, it will not be the liability of the management as per circular too.
>
> On the circumstances as stated above, we propose to allow him to join his duty subject to submitting original documents as stated above and medical fitness, approval of the competent authority BCCL, since the absenteeism period is more that one & half years.
>
> sSubmitted to the chief General Manager, WJA Moonidih for his kind perusal and necessary action."

7. If this is the recommendation it is not understood why a chance is not given to the workman.

8. Considering the fact and circumstances the action of the management of Bhatdee colliery of M/S. BCCL in not allowing Sri Raju Vishwakarma, M/Loader to resume the duty in the company is not justified. The opinion of the Tribunal, dismissal is a harsh punishment to the workman. Hence he be reinstated in the said post after due formality without back wages.

This is my award. R.K. SARAN, Presiding Officer

नई दिल्ली , 20 मार्च, 2013

का.आ. 886.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी॰सी॰सी॰एल॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध ा में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं॰ 1, धनबाद के पंचाट (संदर्भ संख्या 198/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-03-2013 को प्राप्त हुआ था।

[सं॰ एल/20012/352/1996-आईआर(सी-1)]

एम॰के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 20th March, 2013

S.O. 886.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 198/1997) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in ralation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 20/03/2013.

[No. L-20012/352/1996-IR(C-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (N0. 1), DHANBAD.

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A) OF I.D. ACT, 1947.

REF. NO. 198 OF 1997

Employers in relation to the management of Barora Area of M/S. B. C.C.L.

and

Their workmen.

Present : Sri Ranjan Kumar Saran, Presiding officer

Appearances:
For the Employers. : None
For the workman. : Sri K. Chakraborty, Rep.
State : Jharkhand
Industry : Coal.

Dated. 04/03/2013

AWARD

By Order No. L-20012/352/96-IR (C-I), dated 25/11/1997, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the demand of the Union for the fixation of the salary of Sh. S.M. Loraiya Accountant at Rs. 1,481/- in the year 1987? is justified? if so, to what relief is the workman entitled?"

2. The case is received from the Ministry of Labour on 03.12.1997. Both parties are noticed. The Union files their written statement on 21.01.1998. After that rejoinder and document received and marked. The only point to be decided in the reference is whether the workman is entitled to one advance increment. Since he has passed graduation in the year 1986 during his service tenure, as per the circular of the management.

3. In this case said circular has been filed by the workman w-1. the relevant portion of the said circular is extracted below:

"It has been decided to grant one advance increment to the under graduate ministerial staff irrespective of their place of posting who obtained a degree *viz*- B.A, B.Sc, B.Com from a recognized University or equivalent institute.

Advance increment will be admissible in respect of the employees who have already obtained higher qualification during the service period from 20.11.1974 to 31.12.1982. This benefit will not be applicable beyond 31st December 1982."

4. From the above circular it is clear that the employees who became a graduate beyond 31st December 1982, are not entitled to one advance increment. The workman in his evidence has stated that he passed B.Com first part. In the year 1986 he completed his graduation.

5. Therefore according to the circular, the workman is not entitled to get any advance increment. His further claim that his juniors are getting higher scale than him, the basis is not known to this Tribunal nor that has been explained by the workman before us for entitled to the relief claimed.

6. Considering the facts and circumstance, I hold that the demand of the union for the fixation of the salary of Sri S.M. Loraiya Accountant at Rs. 1,481/- in the year 1987 is not justified, Hence the workman is not entitled to get any relief, the reference is answered against the workman.

This is my award

R.K. SARAN, Presiding Officer

नई दिल्ली , 20 मार्च, 2013

का.आ. 887.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी॰सी॰सी॰एल॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं॰ 1, धनबाद के पंचाट (संदर्भ संख्या 4/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-03-2013 को प्राप्त हुआ था।

[सं. एल/20012/181/2002-आईआर(सी-1)]
एम॰के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 20th March, 2013

S.O. 887.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 4 of 2003) of the Central Government Industrial Tribunal-cum-

Labour Court, No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in ralation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 20/03/2013.

[No. L-20012/181/2002-IR(C-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (N0. 1), DHANBAD.

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A) OF I.D. ACT, 1947.

Ref. No. 4 of 2003

Employers in relation to the management of P.B. Area of M/S.B. C.C.L.

and

Their workmen.

Present : Sri Ranjan Kumar Saran, Presiding officer

Appearances:

For the Employers. : Shi D.K. Verma, Advocate
For the workman. : None
State : Jharkhand
Industry : Coal.

Dated. 08/03/2013

AWARD

By Order No. L-20012/181/2002 (C-I), dated 10/12/2002, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the demand of Sampurna BCCL Chalak Samittee from the management of P.B. Area of M/S. BCCL, for regularisation of S/Sri Lalan Singh, Sohar Singh and Mahesh Yadav as Driver in Cat-V *w.e.f.* 1992 and fix pay of the concerned workman in the corresponding category and scale from 1992 itself is fair and justified? If so, to what relief are the concerned workman entitled?"

2. The case is received from the Ministry of Labour on 01.01.2003 Both parties are noticed. The workman files their wirtten statement on 17.02.2003. And rejoinder filed by the workmen on 26.08.2003. The short point involved in the case is whether the workmen named mentioned on the reference are to be regularised as Driver Category V from 2002.

3. By office order No. 11906 dated 06.09.1990, Sri Lalan Singh and Sohar Singh alongwith others are allowed to work as Dumper/Tripper Driver trainee, in their existing category/group wages and after their training they will be regularised at their respective categories. Accordingly the above named person after their training as shown are to be regularised as Driver in category-V *w.e.f.* 31.3.1992, as recommended by the Deputy Chief Personnel Manager Pootkee Balihari area to the Competent Authority *vide* REF: PBA; regularisation 92/2170 Dated 31.03.1992/11.4.92.

4. The above named workman were regularised from 31.03.1992 by the Deputy CME/Agent, Bhagabandh Colliery as per order No. 66 Dated 04.06.1992. But it is not understood as to how Lalan Singh and Sohar Singh were regularised in 1998, in category-V without showing any reason or justification.

5. Therefore, it is ordered as recommended earlier, trained workman Lalan Singh and Sohar Singh are to be regularised in category-V *w.e.f.* 31.03.1992 not from the Date 22.9.98

6. Considering the facts and circumstances, I hold that the demand of sampurna BCL chalak samitee from the management of P.B. Area for regularisation of Sri Lalan Singh and Sohar Singh is fair and justified as Driver in cat-V *w.e.f.* 1992 and they will be allowed to get benefits of category-V workman *w.e.f.* 31.3.1992. But Sri Mahesh Yadav is not regularised in service and not entitled to any relief. The reference allowed in part.

This is my award. Sd/-

R.K. SARAN, Presiding Officer

नई दिल्ली , 22 मार्च, 2013

का.आ. 888.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ई॰सी॰एल॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 3/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-03-2013 को प्राप्त हुआ था।

[सं. एल/20012/179/1991-आईआर(सी-1)]
एम॰के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 22nd March, 2013

S.O. 888.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 3/1992) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. ECL and their workmen, which was received by the Central Government on 22/03/2013.

[No. L-20012/179/1991-IR(C-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

Present

Shri Kishori Ram,

Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 03 OF 1992

Parties : Employer in relation to the management of Chapapur II Colliery of E.C.L. and their workmen.

Appearances :

On behalf of the workmen	:	None
On behalf of the management	:	Late B.M. Pd., Ld. Adv.
State: Jharkhand	:	Industry: Coal

Dated, Dhanbad, the 4th Feb., 2013

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012(179)/91.IR (Coal-I) dt. 14.1.1992.

SCHEDULE

"Whether S/Shri Abdul Kalam and 166 other contractor workers are workman of the Chapapur-II Colliery of M/s. Eastern Coalfields Ltd. and whether the demand that these persons be regularised in the service of the said management is justified? If so, to what relief these persons are entitled?"

2. The case of the sponsoring union—Bihar Colliery Kamgar Union, Jharnapara, Hirapur, Dhanbad (Jharkhand) is that workmen Abdul Kalam and 166 other had been performing the job of permanent nature driller, blaster, explosive carrier, auto electrician, fitter mechanic, store attendant, shoval operator, tarex operator, turner, store keeper etc. in prohibited category in Chapapur II Colliery of M/s. E.C.L. since long. All the jobs are given in the Wage Board. Recommendations as implemented by the management. They worked under the direct control of the management; as per the Mines Act, Rules and Regulations, all the workmen engaged in the job of removal of overburden, stone cutting, raising coal and other jobs of permanent nature are legal bound to work under the direct control and supervision of the competent person. Practically they were raising 90% of the coal for all purposes. They had put in more than 190/240 days attendance in each calendar year. Though they were the employees of the employers for all purposes, the management with an ulterior motive to victimise them, and for personal gain of its officers, entrusted the job to so called contractor, and accordingly the management had been giving them their wages through alleged contractor only to deprive them and arranging all the papers only to camouflage the real issue only in view to deprive the poor workmen. Other workmen of the Coal Industry were and are getting wages as per NCWA II, III & IV. The action of the management in paying the workmen much below the rates of NCWA was illegal, arbitrary and denial to equal pay for work of equal nature. Neither the alleged contractor had any licence nor the management had any registration certificate for it. Despite several times representation by the workman and the Union for their regularisation, the anti-labour managements refusal to amicably settle the Industrial Dispute on 4.12.1990 before the A.L.C. (C), Dhanbad, it resulted in the reference for an adjudication. The action of the management in not regularising them in service and under-paying their due wages was illegal, arbitrary and unjustified and against the principle of natural justice.

3. In its rejoinder categorically denying all the allegations of the management the union has denied the reference barred by alleged Tripartite Settlement dt. 11.9.1991 between Arbind Construction Company Ltd. and Dhanbad Karmachari Sangh before the ALC(C), rather the workmen were and are members of Bihar Colliery Kamgar Union; Dhanbad Karmchari Sangh had no authority to raise or settle any dispute for them. When the dispute was raised at that time the name of the colliery was Chapapur II Colliery it is still functioning, however, it was a pleasure of the management to change the name of the colliery as and when required. The workmen were directly involved in the production of coal in the colliery, as they had performed the job of permanent nature—both raising of coal and cutting of stones. All the workmen were engaged by the management through intermediary for performing permanent job, so any settlement with alleged intermediary by stranger union is not enforceable in respect of the reference.

4. Whereas the contra pleaded case of the management is that the present Industrial Dispute is not maintainable, as the sponsoring union has no *locus standi* in it on the ground that alleged person are not the member of it; there was never any employer and employee relationship between Shri Abdul Kalam and others 166 persons quite stranger to and the management. The Reference is barred by Tripartite Settlement dt. 11.9.1991 between M/s. Arbind Construction Coal Ltd., Contractors and the Dhanbad Karmchari Sangh before the ALC (C), Dhanbad. Though there is no colliery named Chapapur II Colliery; now, the Eastern Coalfields Ltd., has one Chapapur Colliery in the year 1988, the management had opened a

Mechanised Quarry to be operated exclusively through hired heavy Earthmoving Machinery of Arbind Construction Coal Ltd, The aforesaid Quary at Chapapur was a separate Mine with a separate Industrial Establishment under the provisions of the Mines Act and the Industrial Dispute Act. But due to unavoidable circumstances and litigation by the aforesaid Company, it worked upto July, 1991 and the Mechanised Quarry was closed as now, in respect of which there is no proposal to operate it again. Since as per the arrangements of the management for operation of the Mechanised Quarry through the hired Heavy Earth Moving Machinery of the aforesaid Company was on temporary basis, so the owners of the aforesaid Machinery had to arrange their own men for their Machinery, as the part of their establishment was outside the Mechanised Quarry.

5. Further case of the management is that the management paid the aforesaid Company for the Machinery hired for the operation of the Mechanised Quarry of the management and the company itself had to pay their workers whomsoever engaged by it casually. The management was unconcerned with such persons casually employed by the company or with the payment of their wages by it, and the company has similar commitment with other parties in respect of the casual engagement of persons in that regard. The Company had engaged their own Supervisor for supervising the work of the operation etc. of its Machinery. After the end of the arrangement between the Management and the aforesaid Company, it took away its machinery and dealt with its workers as per the conditions of their engagement, because its Heavy Earth Moving Machinery and men were inseparable for the Company. As such the claim for the regularisation of the persons by the management as claimed by the Union is not at all justified nor any such question arises. Besides that the aforesaid Company of Heavy Earth Moving Machinery had never employed as many as 167 persons in respect of the aforesaid arrangement for its operation because the number of persons engaged by the aforesaid company was variable and far lesser from time to time. At the end of the hiring arrangements of the Machinery by the management the Industrial Dispute raised by the aforesaid Union and served a strike notice upon the M/s. Arbind Construction Coal Ltd., and the matter in conciliation proceeding before the ALC (C), Dhanbad under the I.D. Act was seized as a result of the settlement between the above Company, the Union and workmen engaged by the Company on 11.9.1991. Since the matter was settled, it was closed once for all, which is an absolute bar to the present Reference, thus the Bihar Colliery Kamgar Union, another Trade Union, cannot be allowed to undo the aforesaid settlement and seek any benefit for the alleged persons' forceful employment into the management; these persons are imposter who never worked under aforesaid Company. The management has no obligation to provide these persons or any genuine workers of the aforesaid Company any employment. The Eastern Coalfields Ltd., is a Government Company under Sec. 617 of the Companies Act, is entirely financed by the Central Government is a state at least for the purpose of Part III of the Constitution being a Central Public Sector Undertaking. All recruitments in the Government Department and Public Sector Undertakings should be made through the Employment Exchange after due compliance with the provisions of the Employment Exchange (Compulsory Notification of Vacancies) at. There can be no backdoor employment of the persons. The E.C.L. has already burden of surplus workers.

6. The Management in its rejoinder, denying categorically the allegations of the Union, has stated that the recommendations of the Central Wage Board for Coal Industry, then a non-statutory Wage Board, (even to that extent accepted by the Central Government) ceased to be in force from 01.01.1995. The work effected through hired earth moving machinery in quarries was never prohibited The Mines Act, Mines Rules and Coal Mines Regulation deal with safety matters and arrangements in that connection, which is quite different from supervision of the work. Many jobs in Coal Mines are being executed by different Coal Mines Workers through contractors and licences as per their licences issued by the Licencing Authority concerned under the Contract Labour (Regulation & Abolition) Act, 1970. In all such cases, the contractors' workers remain workers of contractors only.

The work done by machines is quite distinct from work done manually. Only some manually jobs on contract are prohibited by the said Act but since the introduction of aforesaid heavy Machinery of different in Coal Industry is of different, contractual manual jobs have no applications. As the management never employed the alleged persons, so the question for stopping them by it from services neither arises nor can be. The Sec. F of the I.D. Act is quite irrelevant.

FINDING WITH REASONING.

7. In the reference case, WWI Ram Chandra Biswas, one Sl. No. 45 of the workmen's list, in behalf of the Union concerned and MWI Chandi Charan Nag, the then Survey Officer and MW2 R.J. Singh for the management have examined.

According to the statement of WWI Ramen Chandra Biswas (Sl. No. 45) all the workmen including him continuously worked as Compressor Operator, bloster, Driller Explosive Carrier, Shavel Dumper Operator, Store Keeper, Mechanic and Fitter etc. at Chapapur Colliery in the year 1987 and 1988 under the management since their appointment in the former year. They every day used to mark their attendance, collected instruments from the stores and used to work as distributed by the management for more than 240 days each year. They worked with permanent

workers, and used to draw their wages as per the photocopies of their Pay Slips issued by Arvind Construction Co. Ltd. (with objection) (for Oct. 90 to March 91)-Extt. W. 3 series (with objection) but not according to N.C.W.A Out of his 18 photocopies of the I.D. Cards issued by M/s. Arvind Construction Co. Ltd., signed by the Project Officer as Extt. 1 series, those of the I.D. Cards of Kashi Nath, Sahdeo Gorai Sunil Kr. Singh and Santosh Viswakarma are beyond the list of the workmen enclosed with the Reference. So far as the photocopies of the Form of their Appointment as Extt. W. 2 series (with objection) are concerned, these are total eight in number out of which its copies of Parash Mandal (Sl. No. 2), Bula Mallih (both double copies) and T.P. Mandal (both latter unlisted), and rest, and the rest are of K.C. Yadav, aforesaid Parash Mandal, Surendra Pd. Singh and Ramen Chandra Vishwas (Sl. No. 153, 2, 6, and 8 respectively).

8. Besides that, the minutes of discussion held between the management (Ext. W. 4), the copy of order for hiring of equipment, heavy earth moving machine (Ext. W. 5), the copies of alleged Attendance of the persons employed in Open Cast at Chapapur Colliery II in 253 sheets for period from 4th Sept. to 25th December, 1989, and from 1st Jan. to 16th April, 1990 (weekly) which are not Attendance but monthly Chart based on six days work per weekly chart under the signature of Sri Ashok Dutta Gupta Attendance Clerk, the photocopies of the Order dt. 29.1.90 of the Safety Officer, Chapapur Colliery about the basic training of three contractual labourers (S/Sri B.K. Dubey, Chinta Haran Das and Fatik Mandal) (Ext. W 7) of the Vocational Training Certificate of Fatik Mandal (Ext. W. 8) of his Attendance Report for the period from 29th Jan. to 10th Feb, 1990 (Ext. W. 9), of Payment of Salary Ext. W. 10 unmentioned in the evidence of WW1, and the photocopies of Payment Sheet (Ext. W. 11 Series - in 19 (nineteen) sheets of total 216 employees for the month of March, 1990 only)—all along the aforesaid Extt. with objection—have been brought on the record by WWI Ramen Chandra Biswas.

But the workman (WWI) has admitted that they have not got any appointment letter, any Pay Slips or any Identity Card from the management, expressing his ignorance of any contractor other than the Arvind Construction Co. Ltd., which supplied heavy earth moving equipment to the management.

9. Whereas the statement of MWI Chandi Charan Nag, the then Survey Officer of Chapapur Colliery under the management seems to affirm the case of the management. According to him, while his posting as then Survey Officer at the Chapapur Colliery, the management entered into the contract dt. 14th April, 1988 (Ext. M. 4) with the Arvind Construction Co. Ltd on acceptance of the management's tender by them, and thereafter the work order dt. 14.4.88 (Ext. M. 1) of the management was accepted by the Company for hiring of heavy earth removal machineries. These aforesaid machineries were to be operated by the operators of the Construction Company. The management used to maintain its record i.e. the Measurement Book (Ext. M-2, MB. No. 10 of Quary No. 10 (Ext. 1989-90) relating to the work done by the said Company. The management used to pay money to the company according to their bills submitted by then after its proper verification for the work done by it (the Bills marked Ext. M. 3 series total 25 sheets, out of which eight Bills with the sixteen statements etc. of the Explosive Materials supplied to the Company and one statement of Arrear Income Tax for the relevant period of the 1989) as per the said Contractual terms and conditions. The said Arvind Construction Company was given to the Contract for taking up the mechanical works in the same and identical Chapapur Colliery or Chapapur II Colliery, in the single existence. Since the management had no involvement in engagement of any worker by the said Company, there was no existence of employer-employee relationship between the management and the aforesaid Company. The contractual work started from 1989 and completed in the year 1999, thereafter no relationship whatsoever existed between the management and the said construction works including its workers.

10. Further statement of the management witness (MWI), is that in an Open Cast Mine, cutting of earth, stone and coal is essential. Each mine has to maintain Form B Register, and attendance of any worker in the Mine should be noted in either of Form C, D or E. Management also engages different types of workers to operate different machines for cutting earth, stone, coal as for lifting coal. The said Arvind Construction Company was also given a contract for cutting earth, coal and stone during the year 1987-88 (voluntarily stated not to have been posted there). Independently no contract was given to the said Company for raising coal.

11. Likewise is the statement of MW2 R.J.P. Singh, the Under Manager of the Chapapur Colliery which seems quite supportive to that of Sri Chandi Charan Nag (MW1). The witness (MW2) has maintained the case of the Management that in the year 1989, some machine and tools were hired by the management from the Arvind Construction Company for engaging over burden removal. Those machines and tools were operated by the men of the said company for removal of over burden under their supervision from 1989 to 1991 at the colliery. Shovel, dumper, drilling machines etc. were hired by the management from the company for taking up the job. In all 5-6 workers were engaged for operation of the said machines. The management used to measure the work done by the company (Ext. M.2-Measurement Book identified) as per the work order, Bills (with statement) and the terms & conditions (Extt. M-1, M.3 series and M.4 respectively) and payment was made to the said company by the management on the basis of the Bills. The working of the said mechanised quarry through hired machinery of the

Company only upto March, 1991 due to unavoidable circumstances and litigation of the Company and the closure of the quarry as mentioned in para 5 of the Written Statement of the management has been justified by the witness (MW1). He has stated the measurement book (Ext. M.2) has note about the measurement of cutting coal and its transportation, but it clearly relates to excavation at the quarry of Chapapur Colliery II (as Colliery I was closed in about 1978) known as Chapapur Colliery since then. Maintenance of Form B Register containing particulars of every worker in every colliery, and recording of Attendance of workers working in the mine., have also been asserted by the witness (MW1), but he tailed to assert who were the workmen in the instant reference case.

12. On the careful consideration of the materials as adduced and available on behalf of both the parties, I find the following facts:

That not a single document of the workmen establishes the employer—employee relationship between both the parties, rather it proves their status as temporary workers of their contractor : Arvind Construction Co. Ltd. for their job/work of heavy burden earth removal through its heavy machinery. Each document of the workmen establishes their payment of wages made by the said company for their performance and that the workmen/the Union Representative has utterly failed to prove that they had continuously but actually worked for 240 days in any calendar year as required under Section 25 B (2) (b) (ii) of the Industrial Dispute Act, 1947 though, it stands unquestionable on account of their being workers for the said company.

Under these circumstances, it is held and accordingly awarded in the terms of reference as such:

> None of S/Shri Abdul Kalam and 166 other contractor workers are workmen of the Chapapur II Colliery of M/s Eastern Coalfields Ltd., so their demand for regularisation in the service of the said management is total unjustified. In result, these persons are not entitled to any relief.

Sd/-
KISHORI RAM, Presiding Officer

नई दिल्ली, 22 मार्च, 2013

का॰आ॰ 889.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी॰सी॰सी॰एल॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं॰ 2 धनबाद के पंचाट (संदर्भ संख्या 32/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.03.2013 को प्राप्त हुआ था।

[सं॰ एल-22012/206/2004-आई आर (सी-I)]
एम के सिंह, अनुभाग अधिकारी

New Delhi, the 22nd March, 2013

S.O. 889.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2005 of the Central Government IndustrialTribunal-cum-Labour Court No. 2, Dhanband as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 22.03.2013.

[No. L-22012/206/2004-IR (C-I)
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2), AT DHANBAD

Present

Shri Kishori Ram,

Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 32 OF 2005

Parties : Employer in relation to the management of Kusunda Area of M/s BCCL and their workman.

Apperances:

On behalf of the workman : None
On behalf of the management : Mr. U.N. Lal, Ld. Adv.
State : Jharkhand Industry: Coal

Dated, Dhanbad, the 15th Feb., 2011

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/206/2004-IR(C-I) dt. 24.3.2005.

SCHEDULE

> "Whether action of the management of M/s BCCL not to give employment to Sri Kundan dependant son of Late Nanka Bhuiya, Bhatta Trammer of Capsule Workshop, Godhur under Kusunda Area of M/s BCCL under the provisions of NCWA is justified? If not, to what relief if the said dependant entitled?"

2. Neither Mr. K.N. Singh, the Union Representative for Petitioner Kundan nor the Petitioner present nor any witness of the peititioner produced despite last change. But Mr. U.N. Lal, Ld. Advocate of the management is present.

Perused the case record. It stands clear that the case has been pending for the evidence of the workman since 31.10.2011 and since thereafter the petitioner has been given ample opportunities for his evidence in the case related to his employment as dependant son of Late Nanak Bhuiya, Bhatta Trammer of Capsul Workshop, Godhur under Kusunda Area of M/s BCCL, yet the Union / the Petitioner did not respond to the Regd. Notices dt. 3.4.12 and 5.11.12. The very conduct of the Union Representative as well as of the Petitioner clear reflects the fact that neither of them is interested in pursuing the case of its final adjudication.

Under these circumstances, proceeding with the case for uncertainty is unwarranted. Hence the case is closed and accordingly, it is passed an order of no industrial dispute existent.

Sd/-
KISHORI RAM, Presiding Officer

नई दिल्ली, 22 मार्च, 2013

का॰आ॰ 890 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी॰सी॰सी॰एल॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 5/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.03.2013 को प्राप्त हुआ था।

[सं॰ एल-22012/129/2007-आई आर (सी-I)]
एम के सिंह, अनुभाग अधिकारी

New Delhi, the 22nd March, 2013

S.O. 890.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No 5/2008) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanband as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of M/s. BCCL and their workman, received by the Central Government on 22.03.2013.

[No. L-20012/129/2007-IR (C-I)
M.K. Singh, Section Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2), AT DHANBAD
Present
Shri Kishori Ram,
Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 05 OF 2008

PARTIES : Employer in relation to the management of Katras Area of M/s BCCL and their workman.

Apperances:

On behalf of the workman : Mr. R.R. Ram, Ld. Adv.

On behalf of the management: Mr. D.K. Verma Ld. Adv.

State: Jharkhand Industry: Coal

Dated, Dhanbad, the 14th Feb., 2013

AWARD

The Government of India, Ministry of Labour in exercise of the power conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/129/2007-IR(CM-I) dt. 07.01.2008.

SCHEDULE

"Whether the action of the management of Salanpur Colliery of M/s BCCL in not providing dependent employment to Kumari Shima, D/o Late Asha Devi, General Mazdoor under the provisions of NCWA is justified and legal? If not, to what relief is the dependent daughter of Late Asha Devi entitled?"

2. Mr. R. R. Ram, Ld. Advocate-cum-Union Representative for Petitioner Kumari Shima and Mr. D.K. Verma, the Ld. Advocate for the management are present, but neither Rejoinder of the petitioner nor any documents filed any of the parties. The Union Representative orally submitted that for the closure of the case on the ground that the peittioner has left to contest the case.

Perused the case record. I find that the case has been pending for filing a Rejoinder on behalf of the petitioner since 13.6.2012, for which Reg. Notice dt. 02.01.13 was issued to the Union. The present Reference relates to an issue concerning the employment of dependant petitioner Kumari Shima D/o Late Asha Devi, the General Mazdoor. In view of the submission of the Union Representative for the petitioner, it stands clear that no Industrial Dispute exists; therefore accordingly, an order of No Industrial Dispute existent is passed.

Sd/-

KISHORI RAM, Presiding Officer

नई दिल्ली, 22 मार्च, 2013

का॰आ॰ 891 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी॰सी॰सी॰एल॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 34/1995) को

प्रकाशित करती है जो केन्द्रीय सरकार को 22.03.2013 को प्राप्त हुआ था।

[सं॰ एल-22012/84/1994-आई आर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 22nd March, 2013

S.O. 891.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/1995 of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanband as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 22.03.2013.

[No. L-22012/84/1994-IR (CM-I)

Sd/-

M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

Present

SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 34 OF 1995

Parties : Employer in relation to the management of Simlabahal Colliery of M/s BCCL (Bhalgora Area) and their workman.

Apperances: On behalf of the workman : Mr. S.N. Goswami, Ld. Advocate.

On behalf of the management: None

State: Jharkhand Industry: Coal

Dated, Dhanbad, the 4th Feb., 2013

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(84)/94.I.R.(Coal-I) dt. 10.03.1995.

SCHEDULE

"Whether the action of the management of Simlabahal Colliery under Bhalgora Area of BCCL, PO: Jharia, Distt: Dhanbad in dismissing from service of Shri Jogendra Turi, Ex-Tyndal with effect from 1.9.1993 is justified? If not to what relief the workman is entitled to?"

2. The case of the sponsoring union is that workman Jogendra Turi was employed as Miner/Loader on 28.8.1972, subsequently converted as Tyndal on time rate, but he was dismissed from his service by the management of Simlabahal Colliery under Bhalgora Area of B.C.C.L. Jharia, Distt: Dhanbad w.e.f. 1.9.1993 as the letter No. BCCL/S.B.C./PO/193/2040 dt. 31.8./1.9.1993 on the charges of impersonation under clause 18(i)(a) and 18(i)(o) of the Model/Certified Standing Orders as applicable to the establishment as per the letter No. BCCL/BA/SBC/89/1828 dt. 10.11.89, though he rendered his satisfactory services for more than seventeen years. The workman had submitted his satisfactory explanation to the chargesheet, yet the management held the domestic enquiry. His dismissal was based on perverse finding of the Enquiry Officer which was unbased on valied evidence facts either legal are documentary, after inordinately delaying the departmental enquiry adversely affecting the workman's defence. Therefore, it has been urged for unjustifying his dismissal and for his reinstatement in his services of the Company with full back wages and others benefits deemed fit and proper.

3. Further the workman himself in his rejoinder with specifical denials has pleased that the management's Enquiry Officer was biased who did not give him full opportunity for defence. Hence, the enquiry was held against the principle of natural justice. The Disciplinary Authority did not apply his mind. The Employer is not a public servant u/s 21 clause 12 of the I.P.C., as the Officers of the BCCL are not rendering the sovereign function of the state, being so no immunity is granted to them.

4. Whereas the contra pleaded case of the management is that workman Jogendra Turi, Ex-Tyndal was issued the aforesaid chargesheet, as he had secured employment at Simlabahal Colliery by fraudulently impersonating as Jogendra Turi S/o Sri Bipan Turi as Tyndal from 28.8.72 against I/D No. 72438 furnishing therein his bio-data with leave address Village, PO/PS. Goh, Distt: Gaya presently in Aurangabad. That was revealed during the verification of Bio-data filed by him as per his Affidavit dt. 13.2.1985 before the Colliery Authority/G.M. for correcting his name Jogendra Singh S/o Sheo Shanker Singh of same village as contrasted with his details earlier recorded on the Colliery Form B Register at Sl. No. 109. He was charged with misconduct under clause 18(1)(a) and 18(i)(o) of the Model/Certified Standing Order applicable to the Colliery. Though he replied to the chargesheet, finding it unsatisfactory the enquiry was fairly, legally, and as per the principle of natural justice held by Sri C.K. Pandey Dy. P.M., as the appointed Enquiry Officer. He fully participated in it for his defence, for which he was asked to keep co-worker, and was given full opportunity to cross examine the prosecution witnesses, adduce evidence and produce defence witnesses. After due enquiry, the Enquiry Officer submitted his enquiry report with the enquiry proceeding, finding and holding him guilty of the charges.

In result, the Competent Authority accepting the findings of the Enquiry Officer considered his dismissal from the service of the Company as per the letter dt. 31st Sept., 1993, in view of his misconduct of serious nature. The workman is not entitled to any relief. It is also alleged the BCCL as a Govt. Company u/s 161 of the Company Act, it is wholly financed by the Central Government, so the Employers of the Company are public servant u/s 21(12) of the I.P.C. It has been proposed for decision over first instance as a preliminary issue as to its fairness, and if found on fair, then for an opportunity for afresh evidence on merit.

5. Categorically denying the allegations of the workman, the management in its rejoinder has stated that Shri Turi also produced his defence witnesses. The delay, if any, was due to the fault of the workman. He was dismissed on the proved charges, which were of grave nature. Thus his dismissal was quite just and proper.

FINDING WITH REASONINGS

6. In this reference, the domestic enquiry was held neither fair and proper in favour of the workman as per the order No. 37 dt. 21.6.1999 of the Tribunal; the management accordingly produced the following three witnesses on merits as under:

MW1: Balram Prasad, Sr. Inspector Vigilance;

MW2: Joginder Turi s/o Bipan Turi r/o vill. Kurkutand, P.S. Tundi Dhanbad, and

MW3: Naresh Murmu, Ex-Mukhaiya, Dhanbad.

WWI Jogendra Turi of same parentage but of different village/PO Goh, Distt: Aurangabad (Gaya) with present address of Simlabhalal Colliery, PO: Jharia, Distt: Dhanbad examined on behalf of the union concerned.

7. In this reference case, on consideration of the afresh materials of both the parties on merits, I find that MWI Balram Prasad, Sr. Inspector, Vigilance, has explicitly stated that on the letter dt. 18.2.1986 of the G.K. Kustore with its Annexure photocopy of the Affidavit (Ext. M.8) to the Chief Vigilance Officer, as per whose order, he went the native village ("Kurkutand") of the concerned workman and in presence of Naresh Murmu, the Mukhiya of the Village, he got the Certificate of workman (Yogendra Turi S/o Late BipanTuri) in the pen and signature of the Mukhiya (Ext. M.9), collected the Voter List of 280 Tundi Vidhan Sabha (Ext. M-10), recorded the statement of aforesaid workman under his LTI (Ext. M. 11) in presence of two independant witnesses, and thereafter, he (MW1) submitted his verification report typed and duly signed by himself (Ext. M-12). Proving the statement of Mr. P.S. Ramchandran, the Dy. Chief Vigilance Officer, BCCL as Ext. M-13 concerning the investigation of the case of impersonation by one Yogendra Singh in the name of Sri Yogendra Turi, and his own statement (as Ext. M. 14) recorded by the E. O. (Enquiry Officer) in the departmental enquiry, the management witness (MWI on merit) has established that the alleged workman was not the actual workman, rather he was working by false personfication as Yogendra Turi, whose address as in the Form-B Register was totally different from that of alleged workman Yogendra Singh, who also disclosed in his affidavit his false identity, in respect of which an F.I.R. was lodged, but the fate of it unknown to him. According to him (MWI), on the basis of his report, the concerned (alleged) workman was chargesheeted, and at its enquiry, he was found guilty, and on the report of the E.O. (Enquiry Officer), the Disciplinary Authority dismissed him from the service. No defence could substantially cross the M.W.1 Balram Prasad the Inspector (Vigilance) except the fact that as his report (Ext. M. 12) was confidential, so he confidentially submitted to the management, and actual workman Yogendra Turi was unexamined during the enquiry (departmental).

8. M.W. 3 Naresh Murmu (on merit) is the Ex-Mukhiya of village Kurkutand. His statement as quite supportive to the spot verification by the Vigilance Inspector B. Prasad (M.W. 1) on merit in his presence as endorsed by him (Ext. M. 11/1) on the statement of Yogendra Turi at his village Kurkutand, P.S. Tundi, Dhanbad. The witness (MW3) also stated to have issued the Certificate (Ext. M.9) as identified in respect of actual villager Yogendra Turi, who had personally told him while he worked.

9. Likewise the statement of MW2 Yogendra Turi (on merit) an illiterate person is inevitably condusive to the spot verification of him and his parentage by the Sr. Inspector Vigilance B. Prasad (identified) in presence of the Mukhiya at his village. His statement in the Reference as also stated before the Inspector (Vigilance) evidently depicts that he was employed at Simlabahal Colliery by the private management about six months before its nationalisation, after which, the management for purpose of keeping record of his each work started taking photograph of them, while he was on night shift duty, and on joining there to get his photograph, when he saw a quarrel and assault ("maramari") going on between (the anti social activities of) the local people and the workers resulting in his panic, he left the place and since then, he never went to the colliery for duty, as he had seriously fallen ill, and thereafter on visit of the one officer of the BCCL/Koyla Bhawan (virtually) the Inspector (Vigilance) to his village, he disclosed his name and parentage. His version also proves that the private management had taken his L.T.I. on the Register when he started to work there, his name, parentage and village were properly recorded in the Register, though he did not take his photograph.

10. Whereas the affidavited statement of the present workman Jogendra Turi as WWI as son of same Late parentage Bipan Turi but as resident of Village/Post Office Goh, Distt: Aurangabad (Gaya) Bihar is that admittedly he had not got any appointment letter, rather he was initially appointed as Miner Loader at Simalabahal Colliery on

28.8.1992 before the nationalisation of Coalmines, his name was recorded in the statutory Register and Form B Register bearing No. 108, CMPF A/c No. 419024 and I.D. Card No. of 2438 with his photographs affixed under his L.T.I. (Ext. W. 1) he had undergone the Gravy Training from 7th to 19th November, 1977 and 4th Sept. to 30th Oct., 1978 as per his Certificates (Extt. W. 2 & 2/1 respectively, but both dateless of their issuance); he served as Tyndal as per the Authorisation No. 32 dt. 16.12.1987 of the General Manager, Simlabahal Colliery, Bhalgora Area of BCCL (Ext. W. 3); and he submitted his representations dt. 23.10.90 and 13.11.1989 for permission to resume his duty (Extt.4 and 4/1 respectively, but out of them the latter is the carbon copy of his reply to his chargesheet). According to the workman in the reference under an adjudication, he was wrongly dismissed from his service by the incompetent authority on the basis of the illegal chargesheet of impersonation and illegal enquiry into the said charges though he participated in it, but the admission of the present workman, his cross-examination that he as son of Bipan Turi as per Voter List of his Village belongs to Village/PO Goh, Distt.: Gaya now in Aurnagabad, stands his case unproved in lack of any documentary proof to that effect His (WWI) further explicit admission that at the relevant time, at the substance of others instigation, he got his name and parentage changed as Yogendra Singh S/o Shri Shanker Singh Bipan for the purpose of service and that he used to escape the arrest despite his reply' utterly fail to justify and reason for change of his Title from 'Tyri to' Singh' and his parentage from Bipan Turi to Shri Shanker Singh after his alleged long service.

11. Mr. S.N. Goswami, the Ld. Counsel for the present workman submits that he was a genuine worker who was illegally dismissed from his service for his alleged misconduct of inpersonation.But in the face of the clear admission of the about his double titled parentage and residence which is quite distinct from the name, parentage and address of original workman (MW2), the identity of the present workman stands out sorted as ingenuine person, because a person by Dusadh Caste (S.C.) can not be a person of title "Turi". The contention of Mr. S.N. Goswami Advocate for the present workman has not at all pit and substance, hence untenable.

12. In view of the aforesaid findings, I hold in terms of the Reference that the action of the management of Simlabahal Colliery under Bhalgora Area of BCCL,PO: Jharia, Distt: Dhanbad in dismissing Sri Jagendra Turi, Ex-Tyndal from service w.e.f. 01.09.1993 is quite legally justified. Therefore, the workman (alleged) is not entitled to any relief. Hence it is ordered.

sd/-

KISHORI RAM, Presiding Officer

नई दिल्ली, 22 मार्च, 2013

का॰आ॰ 892 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14), की धारा 17 के अनुसरण में, केन्द्रीय बी॰सी॰सी॰एल॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 14/1947) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22/03/2013 को प्राप्त हुआ था।

[सं॰ एल-20012/126/2007-आई आर (सी-I)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 22nd March, 2013

S.O. 892.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 6/2008) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 22/03/2013.

[No. L-20012/126/2007-IR(C-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

Present

SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 6 OF 2008

Parties: Employer in relation to the management of Eastern Jharia of M/s. BCCL and their workmen.

Appearances:

On behalf of the workman: None
On behalf of the management: None
State: Jharkhand Industry: Coal

Dated, Dhanbad, the 14th Feb, 2013

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/126/07-IR(CM-I) dt. 07.01.2008.

SCHEDULE

"Whether the demand of Shri Jagraj Singh S/o Late Sukhdeo Singh, Dumper Operator to provide dependent

employment to him under the provisions of NCWA from the management of Patherdih Coal Washery Colliery of M/s. BCCL is legal and justified? If so, to what relief is the dependant son of Late Sukhdeo Singh entitled?."

2. Neither Union Representative for 'Sampurna Bharat Cooking Coal Ltd., Chalak Samittee at Patherdih Coal Washery, Qr. No. F-68, Patherdih Coal Washery, Dhanbad nor petitioner Jagraj Singh S/o Late Sukhdeo Singh, Dumper Operator, appeared nor any written statement filed on his behalf, nor any representative for the General Manager, E.J. Area of M/s. BCCL, Bhowra, Dhanbad, appeared.

On perusal of the case record, it stands clear that the case has been pending from the very begining, i.e., since 15.3.2011 for filing written statement on behalf of the Union Representative for the petitioner, but despite four Regd. notices not only to the Union concerned on their addresses noted in the Reference itself, none of them appeared either for proper representation or for filing written statement of the petitioner. The conduct of the Union Representative as well as that of the petitioner clearly shows their unwillingness or disinterestedness in pursuing the case.

Under these circumstances, the proceeding with the case for uncertainty is unwarranted. At Present, it seems no longer the industrial dispute exists; hence the case is closed and accordingly it is passed an order of no dispute of the I.D. existent.

Sd/-

KISHORI RAM, Presiding Officer

नई दिल्ली, 22 मार्च, 2013

का॰आ॰ 893 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी॰सी॰सी॰एल॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 13/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22/03/2013 को प्राप्त हुआ था।

[सं॰ एल-20012/298/2003-आई आर (सी-I)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 22nd March, 2013

S.O. 893.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 13/2006) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 22/03/2013.

[No. L-20012/298/2003-IR(C-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

PRESENT : SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 13 OF 2006.

Parties: Employer in relation to the management of Sijua Area of M/s. BCCL and their workmen.

Appearances:

On behalf of the workman: None

On behalf of the management: Mr. D.K. Verma, Ld. Adv.

State: Jharkhand Industry: Coal

Dated, Dhanbad, the 5th Feb, 2013.

AWARD

The Government of India, Ministry of Labour, in exercise of the power conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/298/2003-IR(C-I) dt. 30.03.2006.

SCHEDULE

"Whether the demand of the Janta Mazdoor Sangh, from the management of BCCL, Sijua Area, that Sh. Deo Kumar Singh, Drill Operator, may be regularized as 'Pit Supervisor', justified? If so, to what relief is the workman entitled and from what date?"

2. None representated the Union-Janta Mazdoor Sangh nor workman Deo Kumar Singh appeared nor any rejoinder nor any documents filed in behalf of the workman despite more than sufficient opportunities and Regd. notices having been issue to the Union on the address noted in the Reference itself upto 26.11.2012. Mr. D.K. Verma, the Ld. Advocate for the management is present.

The perusal of the case record, transpires that the case has been pending for the rejoinder and documents of the workman since 2.11.2011, for which Regd. notices were issued through Regd. post, even then neither the Union Representative nor the workman could file any rejoinder and the documents of the workman. The very conduct of the Union Representative as well as that of the workman clearly indicates they are not willing to contest the case for the reason best known to them. It relates to an issue of regularisation of the workman as Pit Supervisor.

Under these circumstances, the case is closed and according an order of no Industrial Dispute existent is passed.

Sd/-

KISHORI RAM, Presiding Officer

नई दिल्ली, 22 मार्च, 2013

का॰आ॰ 894 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी॰सी॰सी॰एल॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 40/1999) प्रकाशित करती है, जो केन्द्रीय सरकार को 22/03/2013 को प्राप्त हुआ था।

[सं॰ एल-20012/756/1997-आई आर (सी-I)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 22nd March, 2013

S.O. 894.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 40/1999) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 22/03/2013.

[No. L-20012/756/1997-IR(C-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

Present : SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 40 OF 1999

Parties: Employer in relation to the management of Sijua Area of M/s. BCCL and their workmen.

Appearances:

On behalf of the workman: Mr. N.G. Arun, Ld. Adv./ Union Representative

On behalf of the management: Mr. D.K. Verma, Ld. Adv.

State: Jharkhand Industry: Coal

Dated, Dhanbad, the 26th Feb, 2013

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/756/97-IR(C-I) dt. 18.1.1999.

SCHEDULE

"Whether the action of the management in not providing employment to the dependant son, Sri Rajendra Nonia, son of Shri Moti Nonia, Ex.M/ Loader of Sendra Bansjora Colliery as per para 9.4.2 of NCWA-IV is legal and justified. If not, to what relief Shri Rajendra Nonia, son of Shri Moti Nonia is entitled?"

PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, RING ROAD, MAYAPURI, NEW DELHI-110064
AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI-110054.

GMGIPMRND—1250RR (S3)—25-07-2013.

Server3/E/1250RR/1250RR(3)